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August 24, 2005

Re: **Documents for Recordation**

Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001  
Attn: Secretary

RECORDATION NO. 25800 FILED

AUG 25 '05

3-49 PM

**SURFACE TRANSPORTATION BOARD**

Dear Secretary:

Enclosed please find a fully executed original of the document described below, which includes rolling stock as collateral to be recorded with the Surface Transportation Board pursuant to Section 11301 of Title 49 of the U.S. Code.

The document is a Guarantee and Security Agreement (the "**Security Agreement**") dated August 23, 2005, and is a primary document covering rolling stock of CII Carbon, L.L.C. ("CII"). The rolling stock to be covered by this recordation are the private rail cars and engines set forth in Schedule 5 of the enclosed document.

The parties to the Security Agreement are JPMorgan Chase Bank, N.A., as Administrative Agent, CII, as Borrower, and Bedford Finance N.V., Juniper Investment LLC, Juniper Investors I LLC, and Juniper Investors II LLC, as Guarantors.

The addresses of the parties are as follows:

- (1) JPMorgan Chase Bank, N.A.  
Lien Perfection Unit, P.O. Box 2558  
Houston, TX 77252-8301
- (2) CII Carbon, L.L.C.  
2021 Lakeshore Drive  
New Orleans, LA 70122
- (3) Bedford Finance N.V.  
Burgemeester Haspelslaan 131  
1181 NC  
Amstelveen, The Netherlands
- (4) Juniper Investment LLC

Secretary,  
Surface Transportation Board

2

August 24, 2005

1285 Baring Boulevard, #286  
Sparks, NV 89434

- (5) Juniper Investors I LLC  
1285 Baring Boulevard, #286  
Sparks, NV 89434
- (6) Juniper Investors II LLC  
1285 Baring Boulevard, #286  
Sparks, NV 89434

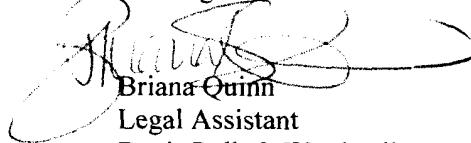
A fee of US\$33.00 is enclosed for this recordation. Please return the original and any extra copies not needed by the Board for recordation to my attention at the address listed below.

Please acknowledge receipt of this filing package by signing in the space provided below and by faxing a signed copy of this letter to my attention at 212-450-6554.

I may be contacted at 212-450-5048 if you should have any questions regarding this recordation.

Thank you for your assistance.

Best regards,



Briana Quinn  
Legal Assistant  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017

**Acknowledgement:**

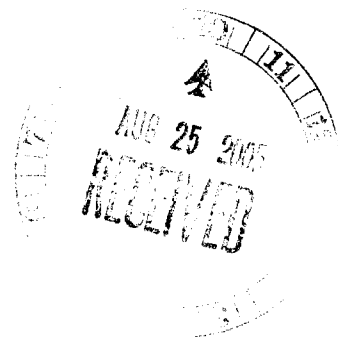
Signed: \_\_\_\_\_ date: \_\_\_\_\_  
Name:  
Title:

RECORDATION NO. 25800 FILED

AUG 25 '05

3-49 PM EXECUTION COPY

SURFACE TRANSPORTATION BOARD



GUARANTEE AND SECURITY AGREEMENT

dated as of

August 23, 2005

among

CII CARBON, L.L.C.

THE GUARANTORS PARTY HERETO

and

JPMORGAN CHASE BANK, N.A.  
as Administrative Agent

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**SCHEDULES:**

- |                   |  |
|-------------------|--|
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| <b>Schedule 2</b> | Other Investment Property Owned by Original Company Lien Grantors  |
| <b>Schedule 3</b> | Other Instruments Owned by Original Company Lien Grantors  |
| <b>Schedule 4</b> | Commercial Tort Claims   |
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| <b>Schedule 6</b> | Parent Guarantor Perfection Information  |

**EXHIBITS:**

- |                  |                                      |
|------------------|--------------------------------------|
| <b>Exhibit A</b> | Security Agreement Supplement        |
| <b>Exhibit B</b> | Copyright Security Agreement         |
| <b>Exhibit C</b> | Patent Security Agreement            |
| <b>Exhibit D</b> | Trademark Security Agreement         |
| <b>Exhibit E</b> | Perfection Certificate               |
| <b>Exhibit F</b> | Issuer Control Agreement             |
| <b>Exhibit G</b> | Securities Account Control Agreement |
| <b>Exhibit H</b> | Deposit Account Control Agreement    |

## GUARANTEE AND SECURITY AGREEMENT

AGREEMENT (this "**Agreement**") dated as of August 23, 2005 among CII CARBON, L.L.C. (the "**Borrower**"), the GUARANTORS party hereto and JPMORGAN CHASE BANK, N.A., as administrative agent under the loan documents (in such capacity, the "**Administrative Agent**").

WHEREAS, the Borrower is entering into the Credit Agreement described in Section 1 hereof, pursuant to which the Borrower intends to borrow funds and obtain letters of credit for the purposes set forth therein;

WHEREAS, the Borrower is willing to secure (i) its obligations under the Credit Agreement and (ii) its obligations under certain Hedging Agreements, by granting Liens on its assets to the Administrative Agent as provided in the Security Documents;

WHEREAS, each of the Parent Guarantors is willing to guarantee the foregoing obligations of the Borrower on a limited recourse basis and to secure its guarantee thereof by granting Liens on its equity interests in the Borrower and any debt owed to it by the Borrower to the Administrative Agent as provided in the Security Documents;

WHEREAS, the Borrower is willing to cause each of its Domestic Subsidiaries to guarantee the foregoing obligations of the Borrower and to secure its guarantee thereof by granting Liens on its assets to the Administrative Agent as provided in the Security Documents;

WHEREAS, the Lenders and the LC Issuing Bank are not willing to make loans or issue or participate in letters of credit under the Credit Agreement, and the counterparties to the Hedging Agreements referred to above are not willing to enter into or maintain them, unless (i) the foregoing obligations of the Borrower are secured and guaranteed as described above and (ii) each guarantee thereof is secured by Liens on assets of the relevant Guarantor as provided in the Security Documents; and

WHEREAS, upon any foreclosure or other enforcement of the Security Documents, the net proceeds of the relevant Collateral are to be received by or paid over to the Administrative Agent and applied as provided herein;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Section 1. *Definitions.*

(a) *Terms Defined in Credit Agreement.* Terms defined in the Credit Agreement and not otherwise defined in subsection (b) or (c) of this Section have, as used herein, the respective meanings provided for therein.

(b) *Terms Defined in UCC.* As used herein, each of the following terms has the meaning specified in the UCC:

<u>Term</u>	<u>UCC</u>
Account	9-102
Authenticate	9-102
Certificated Security	8-102
Chattel Paper	9-102
Commercial Tort Claim	9-102
Commodity Account	9-102
Commodity Customer	9-102
Deposit Account	9-102
Document	9-102
Entitlement Holder	8-102
Entitlement Order	8-102
Financial Asset	8-102 & 103
General Intangibles	9-102
Inventory	9-102
Investment Property	9-102
Record	9-102
Securities Account	8-501
Securities Intermediary	8-102
Security	8-102 & 103
Security Entitlement	8-102
Supporting Obligations	9-102
Uncertificated Security	8-102

(c) *Additional Definitions.* The following additional terms, as used herein, have the following meanings:

**“Cash Collateral Account”** has the meaning set forth in Section 13(a).

**“Cash Distributions”** means dividends, interest and other distributions and payments (including proceeds of liquidation, sale or other disposition) made or received in cash upon or with respect to any Collateral.

**“Collateral”** means all property, whether now owned or hereafter acquired, on which a Lien is granted or purports to be granted to the Administrative Agent pursuant to the Security Documents. When used with

respect to a specific Lien Grantor, the term “Collateral” means all its property on which such a Lien is granted or purports to be granted.

“**Collateral Accounts**” means the Cash Collateral Accounts, the Controlled Deposit Accounts and the Controlled Securities Accounts.

“**Company Lien Grantors**” means each Lien Grantor other than the Parent Guarantors.

“**Contingent Secured Obligation**” means, at any time, any Secured Obligation (or portion thereof) that is contingent in nature at such time, including any Secured Obligation that is:

(i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it;

(ii) an obligation under a Hedging Agreement to make payments that cannot be quantified at such time;

(iii) any other obligation (including any guarantee) that is contingent in nature at such time; or

(iv) an obligation to provide collateral to secure any of the foregoing types of obligations.

“**Control**” has the following meanings:

(a) when used with respect to any Security or Security Entitlement, the meaning specified in UCC Section 8-106; and

(b) when used with respect to any Deposit Account, the meaning specified in UCC Section 9-104.

“**Controlled Deposit Account**” means a Deposit Account (i) that is subject to a Deposit Account Control Agreement or (ii) as to which the Administrative Agent is the Depository Bank’s “customer” (as defined in UCC Section 4-104).

“**Controlled Securities Account**” means a Securities Account that (i) is maintained in the name of a Company Lien Grantor at an office of a Securities Intermediary located in the United States and (ii) together with all Financial Assets credited thereto and all related Security Entitlements, is subject to a Securities Account Control Agreement among such Company Lien Grantor, the Administrative Agent and such Securities Intermediary.



**“Copyright License”** means any agreement now or hereafter in existence granting to any Company Lien Grantor, or pursuant to which any Company Lien Grantor grants to any other Person, any right to use, copy, reproduce, distribute, prepare derivative works, display or publish any records or other materials on which a Copyright is in existence or may come into existence, including any agreement identified in Schedule 1 to any Copyright Security Agreement.

**“Copyrights”** means all the following: (i) all copyrights under the laws of the United States or any other country (whether or not the underlying works of authorship have been published), all registrations and recordings thereof, all copyrightable works of authorship (whether or not published), and all applications for copyrights under the laws of the United States or any other country, including registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, including those described in Schedule 1 to any Copyright Security Agreement, (ii) all renewals of any of the foregoing, (iii) all claims for, and rights to sue for, past or future infringements of any of the foregoing, and (iv) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof.

**“Copyright Security Agreement”** means a Copyright Security Agreement, substantially in the form of Exhibit B, executed and delivered by a Company Lien Grantor in favor of the Administrative Agent for the benefit of the Secured Parties.

**“Credit Agreement”** means the Credit Agreement dated as of the date hereof among CII Carbon, L.L.C, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent, LC Issuing Bank and Swingline Lender.

**“Deposit Account Control Agreement”** means, with respect to any Deposit Account of any Company Lien Grantor, a Deposit Account Control Agreement substantially in the form of Exhibit H (with any changes that the Administrative Agent shall have approved) among such Company Lien Grantor, the Administrative Agent and the relevant Depositary Bank, (i) providing that such Depositary Bank will comply with instructions originated by the Administrative Agent directing disposition of the funds in such Deposit Account without further consent by such Company Lien Grantor and (ii) subordinating to the relevant Transaction Lien all claims of the Depositary Bank to such Deposit Account (except its right to deduct its normal operating charges and any uncollected funds previously credited thereto).

**“Depositary Bank”** means a bank at which a Controlled Deposit Account is maintained.

**“Designated Hedging Agreement”** means a Hedging Agreement designated as an additional Secured Obligation pursuant to Section 26.

**“Equipment”** has the meaning specified in UCC 9-102 and includes, in any event, motor vehicles, trucks, trailers and Rolling Stock.

**“Equity Interest”** means (i) in the case of a corporation, any shares of its capital stock, (ii) in the case of a limited liability company, any membership interest therein, (iii) in the case of a partnership, any partnership interest (whether general or limited) therein, (iv) in the case of any other business entity, any participation or other interest in the equity or profits thereof, (v) any warrant, option or other right to acquire any Equity Interest described in this definition or (vi) any Security Entitlement in respect of any Equity Interest described in this definition.

**“Foreign Subsidiary”** means any Subsidiary which is a “controlled foreign corporation” within the meaning of the Internal Revenue Code of 1986, as amended from time to time.

**“Guarantors”** means the Parent Guarantors and the Subsidiary Guarantors.

**“Instrument”** has the meaning specified in UCC 9-102 and includes, in any event, the Intercompany Notes and any instrument required to be pledged to Administrative Agent by a Company Lien Grantor pursuant to Section 11(b).

**“Intellectual Property Filing”** means (i) with respect to any Patent, Patent License, Trademark or Trademark License, the filing of the applicable Patent Security Agreement or Trademark Security Agreement with the United States Patent and Trademark Office, together with an appropriately completed recordation form, and (ii) with respect to any Copyright or Copyright License, the filing of the applicable Copyright Security Agreement with the United States Copyright Office, together with an appropriately completed recordation form, in each case sufficient to record the Transaction Lien granted to the Administrative Agent in such Recordable Intellectual Property.

**“Intellectual Property Security Agreement”** means a Copyright Security Agreement, a Patent Security Agreement or a Trademark Security Agreement.

**“Intercompany Notes”** means, with respect to each Lien Grantor, (a) the intercompany notes, if any, set forth opposite the name of such Lien Grantor on Schedule 1 hereto and (b) any instrument required to be pledged to Administrative Agent by such Lien Grantor pursuant to Section 11(a).

**“Issuer Control Agreement”** means an Issuer Control Agreement substantially in the form of Exhibit F (with any changes that the Administrative Agent shall have approved).

**“Leased Rolling Stock”** has the meaning set forth in Section 3(a).

**“Lien Grantors”** means the Borrower and the Guarantors.

**“LLC Interest”** means a membership interest or similar interest in a limited liability company.

**“Mortgage”** means a mortgage or deed of trust in form satisfactory to the Administrative Agent in each case creating a Lien on real property in favor of the Administrative Agent (or a sub-agent appointed pursuant to Section 23(b)) for the benefit of the Secured Parties and with such changes in the form thereof as the Administrative Agent shall request for the purpose of conforming to local practice for similar instruments in the jurisdiction where such real property is located.

**“Non-Contingent Secured Obligation”** means at any time any Secured Obligation (or portion thereof) that is not a Contingent Secured Obligation at such time.

**“Opinion of Counsel”** means a written opinion of legal counsel (who may be counsel to a Lien Grantor or other counsel, in either case approved by the Administrative Agent) addressed and delivered to the Administrative Agent.

**“Original Company Lien Grantor”** means any Company Lien Grantor that grants a Lien on any of its assets hereunder on the Effective Date.

**“Original Lien Grantor”** means any Lien Grantor that grants a Lien on any of its assets hereunder on the Effective Date.

**“own”** refers to the possession of sufficient rights in property to grant a security interest therein as contemplated by UCC Section 9-203, and **“acquire”** refers to the acquisition of any such rights.

**“Parent Guarantors”** means each Person listed on the signature pages hereof under the caption “Parent Guarantors” and each other Person that shall, at any time after the date hereof, become a “Parent Guarantor” pursuant to Section 25.

**“Partnership Interest”** means a partnership interest, whether general or limited.

**“Patent License”** means any agreement now or hereafter in existence granting to any Company Lien Grantor, or pursuant to which any Company Lien Grantor grants to any other Person, any right with respect to any Patent or any invention now or hereafter in existence, whether patentable or not, whether a patent or application for patent is in existence on such invention or not, and whether a patent or application for patent on such invention may come into existence or not, including any agreement identified in Schedule 1 to any Patent Security Agreement.

**“Patents”** means (i) all letters patent and design letters patent of the United States or any other country and all applications for letters patent or design letters patent of the United States or any other country, including applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, including those described in Schedule 1 to any Patent Security Agreement, (ii) all reissues, divisions, continuations, continuations in part, revisions and extensions of any of the foregoing, (iii) all claims for, and rights to sue for, past or future infringements of any of the foregoing and (iv) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof.

**“Patent Security Agreement”** means a Patent Security Agreement, substantially in the form of Exhibit C, executed and delivered by a Company Lien Grantor in favor of the Administrative Agent for the benefit of the Secured Parties.

**“Perfection Certificate”** means, with respect to any Company Lien Grantor, a certificate substantially in the form of Exhibit E, completed and supplemented with the schedules contemplated thereby to the satisfaction of the Administrative Agent, and signed by an officer of such Company Lien Grantor.

**“Permitted Liens”** means (i) the Transaction Liens and (ii) any other Liens on the Collateral permitted to be created or assumed or to exist pursuant to Section 6.02 of the Credit Agreement.

**“Personal Property Collateral”** means all property included in the Collateral except Real Property Collateral.

**“Pledged”**, when used in conjunction with any type of asset, means at any time an asset of such type that is included (or that creates rights that are included) in the Collateral at such time. For example, “Pledged Equity Interest” means an Equity Interest that is included in the Collateral at such time.

**"Post-Petition Interest"** means any interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any one or more of the Lien Grantors (or would accrue but for the operation of applicable bankruptcy or insolvency laws), whether or not such interest is allowed or allowable as a claim in any such proceeding.

**"Proceeds"** means all proceeds of, and all other profits, products, rents or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or other realization upon, any Collateral, including all claims of the relevant Lien Grantor against third parties for loss of, damage to or destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any Collateral, and any condemnation or requisition payments with respect to any Collateral.

**"Real Property Collateral"** means all real property (including leasehold interests in real property) included in the Collateral.

**"Recordable Intellectual Property"** means (i) any Patent registered with the United States Patent and Trademark Office, and any Patent License with respect to a Patent so registered, (ii) any Trademark registered with the United States Patent and Trademark Office, and any Trademark License with respect to a Trademark so registered, (iii) any Copyright registered with the United States Copyright Office and any Copyright License with respect to a Copyright so registered, and all rights in or under any of the foregoing.

**"Release Conditions"** means the following conditions for releasing all the Secured Guarantees and terminating all the Transaction Liens:

- (i) all Commitments under the Credit Agreement shall have expired or been terminated;
- (ii) all Non-Contingent Secured Obligations shall have been paid in full; and
- (iii) no Contingent Secured Obligation (other than contingent indemnification and expense reimbursement obligations as to which no claim shall have been asserted) shall remain outstanding;

*provided* that the condition in clause (iii) shall not apply to outstanding Letters of Credit if (x) no Event of Default has occurred and is continuing and (y) the Borrower has granted to the Administrative Agent, for the benefit of the Revolving Lenders (or, if the obligations of the Revolving Lenders to reimburse

the LC Issuing Bank have terminated, to the LC Issuing Bank), a security interest in Permitted Investments acceptable to the Required Revolving Lenders or the LC Issuing Bank, as the case may be (or causes a bank acceptable to the Required Revolving Lenders or the LC Issuing Bank, as the case may be, to issue a letter of credit naming the Administrative Agent or the LC Issuing Bank as beneficiary) in an amount exceeding 115% of the LC Exposure (plus any accrued and unpaid interest thereon) as of the date of such termination, on terms and conditions and pursuant to documentation reasonably satisfactory to the Required Revolving Lenders or the LC Issuing Bank, as the case may be.

**“Rolling Stock”** means all railcars, barges and other water carrier equipment, including without limitation, those listed in Schedule 5 hereto and all accessions, appurtenances and parts installed on and additions thereto, and replacements thereof, now owned or hereafter acquired by a Company Lien Grantor.

**“Rolling Stock Leases”** has the meaning set forth in Section 3(a).

**“Rolling Stock Revenues”** means any monies, revenues, payments or credits now owned or hereafter acquired by any Company Lien Grantor which are generated by or attributable to the Rolling Stock or Leased Rolling Stock, including, without limitation, railcar hire payments, mileage allowances, per diem mileage payments, empty mileage allowances, mileage credits and excess mileage credits, in each case whether now existing or hereafter arising.

**“Secured Agreement”**, when used with respect to any Secured Obligation, refers collectively to each instrument, agreement or other document that sets forth obligations of the Borrower, obligations of a guarantor and/or rights of the holder with respect to such Secured Obligation.

**“Secured Guarantee”** means, with respect to each Guarantor, its guarantee of the Secured Obligations under Section 2 hereof or Section 1 of a Security Agreement Supplement.

**“Secured Obligations”** means (i) all principal of all Loans and LC Reimbursement Obligations outstanding from time to time under the Credit Agreement, all interest (including Post-Petition Interest) on such Loans and LC Reimbursement Obligations and all other amounts now or hereafter payable by the Borrower pursuant to the Loan Documents and (ii) all obligations of the Borrower under any Designated Hedging Agreement.

**“Secured Parties”** means the holders from time to time of the Secured Obligations.

**“Secured Party Requesting Notice”** means, at any time, a Secured Party that has, at least five Business Days prior thereto, delivered to the Administrative Agent a written notice (i) stating that it holds one or more Secured Obligations and wishes to receive copies of the notices referred to in Section 23(e) and (ii) setting forth its address, facsimile number and e-mail address to which copies of such notices should be sent.

**“Securities Account Control Agreement”** means, when used with respect to a Securities Account, a Securities Account Control Agreement substantially in the form of Exhibit G (with any changes that the Administrative Agent shall have approved) among the relevant Securities Intermediary, the relevant Company Lien Grantor and the Administrative Agent to the effect that such Securities Intermediary will comply with Entitlement Orders originated by the Administrative Agent with respect to such Securities Account without further consent by the relevant Company Lien Grantor.

**“Security Agreement Supplement”** means a Security Agreement Supplement, substantially in the form of Exhibit A, signed and delivered to the Administrative Agent for the purpose of adding a Subsidiary as a party hereto pursuant to Section 25 and/or adding additional property to the Collateral.

**“Security Documents”** means this Agreement, the Security Agreement Supplements, the Deposit Account Control Agreements, the Issuer Control Agreements, the Securities Account Control Agreements, the Mortgages, the Intellectual Property Security Agreements and all other supplemental or additional security agreements, control agreements, mortgages or similar instruments delivered pursuant to the Loan Documents.

**“Subsidiary Guarantors”** means each Subsidiary that shall, at any time after the date hereof, become a “Subsidiary Guarantor” pursuant to Section 25.

**“Trademark License”** means any agreement now or hereafter in existence granting to any Company Lien Grantor, or pursuant to which any Company Lien Grantor grants to any other Person, any right to use any Trademark, including any agreement identified in Schedule 1 to any Trademark Security Agreement.

**“Trademarks”** means: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, brand names, trade dress, prints and labels on which any of the foregoing have appeared or appear, package and other designs, and all other source or business identifiers, and all general intangibles of like nature, and the rights in any of the foregoing which arise under applicable law, (ii) the goodwill of the business symbolized thereby or associated with each of them, (iii) all

registrations and applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, including those described in Schedule 1 to any Trademark Security Agreement, (iv) all renewals of any of the foregoing, (v) all claims for, and rights to sue for, past or future infringements of any of the foregoing and (vi) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof.

**“Trademark Security Agreement”** means a Trademark Security Agreement, substantially in the form of Exhibit D, executed and delivered by a Company Lien Grantor in favor of the Administrative Agent for the benefit of the Secured Parties.

**“Transaction Liens”** means the Liens granted by the Lien Grantors under the Security Documents.

**“UCC”** means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided that*, if perfection or the effect of perfection or non-perfection or the priority of any Transaction Lien on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

(d) *Terms Generally.* The definitions of terms herein (including those incorporated by reference to the UCC or to another document) apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. The words **“include”**, **“includes”** and **“including”** shall be deemed to be followed by the phrase **“without limitation”**. The word **“will”** shall be construed to have the same meaning and effect as the word **“shall”**. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words **“herein”**, **“hereof”** and **“hereunder”**, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this



Agreement and (v) the word “**property**” shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 2. *Guarantees by Guarantors.*

(a) *Secured Guarantees.* Each Guarantor unconditionally guarantees the full and punctual payment of each Secured Obligation when due (whether at stated maturity, upon acceleration or otherwise). If the Borrower fails to pay any Secured Obligation punctually when due, each Guarantor agrees that it will forthwith on demand pay the amount not so paid at the place and in the manner specified in the relevant Secured Agreement.

(b) *Secured Guarantees Unconditional.* The obligations of each Guarantor under its Secured Guarantee shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Borrower, any other Guarantor or any other Person under any Secured Agreement, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to any Secured Agreement or Acquisition Document;

(iii) any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of the Borrower, any other Guarantor or any other Person under any Secured Agreement;

(iv) any change in the corporate existence, structure or ownership of the Borrower, any other Guarantor or any other Person or any of their respective subsidiaries, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, any other Guarantor or any other Person or any of their assets or any resulting release or discharge of any obligation of the Borrower, any other Guarantor or any other Person under any Secured Agreement or Acquisition Document;

(v) the existence of any claim, set-off or other right that such Guarantor may have at any time against the Borrower, any other Guarantor, any Secured Party or any other Person, whether in connection with the Loan Documents or any unrelated transactions, *provided* that

nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) any invalidity or unenforceability relating to or against the Borrower, any other Guarantor or any other Person for any reason of any Secured Agreement or Acquisition Document, or any provision of applicable law or regulation purporting to prohibit the payment of any Secured Obligation by the Borrower, any other Guarantor or any other Person; or

(vii) any other act or omission to act or delay of any kind by the Borrower, any other Guarantor, any other party to any Secured Agreement or Acquisition Document, any Secured Party or any other Person, or any other circumstance whatsoever that might, but for the provisions of this clause (vii), constitute a legal or equitable discharge of or defense to any obligation of any Guarantor hereunder.

(c) *Release of Secured Guarantees.* (i) All the Secured Guarantees will be released when all the Release Conditions are satisfied. If at any time any payment of a Secured Obligation is rescinded or must be otherwise restored or returned upon the insolvency or receivership of the Borrower or otherwise, the Secured Guarantees shall be reinstated with respect thereto as though such payment had been due but not made at such time.

(ii) If all the capital stock of a Guarantor or all the assets of a Guarantor are sold to a Person other than the Borrower or one of its Subsidiaries in a transaction permitted by the Credit Agreement (any such sale, a "**Sale of Guarantor**"), the Administrative Agent shall release such Guarantor from its Secured Guarantee; *provided* that, if such sale is a Prepayment Event, arrangements satisfactory to the Administrative Agent have been made to apply the Net Proceeds thereof as required by the Credit Agreement. Such release shall not require the consent of any Secured Party, and the Administrative Agent shall be fully protected in relying on a certificate of the Borrower as to whether any particular sale constitutes a Sale of Guarantor.

(iii) In addition to any release permitted by subsection (ii), the Administrative Agent may release any Secured Guarantee with the prior written consent of the Required Lenders; *provided* that any release of all or substantially all the Secured Guarantees shall require the consent of all the Lenders.

(iv) If a Parent Guarantor transfers Equity Interests of the Borrower to another Person in a transaction permitted by the Credit

Agreement, the Administrative Agent shall release the transferor Parent Guarantor from its Secured Guarantee to the extent of the transferred Equity Interests upon the transferee (unless the transferee is the Borrower pursuant to a redemption of Equity Interests permitted by the Credit Agreement) becoming a party to this Agreement as a Parent Guarantor pursuant to Section 25. The Administrative Agent shall deliver the Pledged certificates representing such transferred Equity Interests to the Borrower in exchange for replacement certificates, for the account of the transferee Parent Guarantor.

(v) If a Parent Guarantor ceases to own Equity Interests of the Borrower in a transaction permitted by the Credit Agreement, the Administrative Agent shall release the Parent Guarantor from its Secured Guarantee and shall deliver any Intercompany Notes Pledged by such Parent Guarantor to such Parent Guarantor.

(d) *Waiver by Guarantors.* Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrower, any other Guarantor or any other Person.

(e) *Subrogation.* A Guarantor that makes a payment with respect to a Secured Obligation hereunder shall be subrogated to the rights of the payee against the Borrower with respect to such payment; *provided* that no Guarantor shall enforce any payment by way of subrogation against the Borrower, or by reason of contribution against any other guarantor of such Secured Obligation, until all the Release Conditions have been satisfied.

(f) *Stay of Acceleration.* If acceleration of the time for payment of any Secured Obligation by the Borrower is stayed by reason of the insolvency or receivership of the Borrower or otherwise, all Secured Obligations otherwise subject to acceleration under the terms of any Secured Agreement shall nonetheless be payable by the Guarantors hereunder forthwith on demand by the Administrative Agent.

(g) *Right of Set-Off.* If any Secured Obligation is not paid promptly when due, each of the Secured Parties and their respective Affiliates is authorized, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Secured Party or Affiliate to or for the credit or the account of any Guarantor against the obligations of such Guarantor under its Secured Guarantee, irrespective of whether or not such Secured Party shall have made any demand thereunder and although such obligations may be unmatured. The rights of each Secured Party under this

subsection are in addition to all other rights and remedies (including other rights of set-off) that such Secured Party may have.

(h) *Continuing Guarantee.* Each Secured Guarantee is a continuing guarantee, shall be binding on the relevant Guarantor and its successors and assigns, and shall be enforceable by the Administrative Agent or the Secured Parties. If all or part of any Secured Party's interest in any Secured Obligation is assigned or otherwise transferred, the transferor's rights under each Secured Guarantee, to the extent applicable to the obligation so transferred, shall automatically be transferred with such obligation.

(i) *Limitation on Obligations of Subsidiary Guarantor.* The obligations of each Subsidiary Guarantor under its Secured Guarantee shall be limited to an aggregate amount equal to the largest amount that would not render such Secured Guarantee subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of applicable law.

(j) *Limited Recourse Nature of Obligations of Parent Guarantors.* Notwithstanding any other provision of this Agreement, the sole recourse of the Secured Parties with respect to each Parent Guarantor for the payment of its obligations hereunder shall be the security interest created hereunder. There shall be no recourse to any assets of a Parent Guarantor in which a security interest has not been granted (or in which a security interest previously granted has been released) hereunder to satisfy such obligations.

### Section 3. *Grant of Transaction Liens.*

(a) The Borrower, in order to secure the Secured Obligations, and each Subsidiary Guarantor listed on the signature pages hereof, in order to secure its Secured Guarantee, grants to the Administrative Agent for the benefit of the Secured Parties a continuing security interest in all the following property of the Borrower or such Subsidiary Guarantor, as the case may be, whether now owned or existing or hereafter acquired or arising and regardless of where located:

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) the Commercial Tort Claims described in Schedule 4;
- (iv) all Deposit Accounts;
- (v) all Documents;
- (vi) all Equipment;

(vii) all General Intangibles (including any Equity Interests in other Persons that do not constitute Investment Property);

(viii) all Instruments;

(ix) all Inventory;

(x) all Investment Property;

(xi) all books and records (including customer lists, credit files, computer programs, printouts and other computer materials and records) of such Original Lien Grantor pertaining to any of its Collateral;

(xii) such Original Lien Grantor's ownership interest in (1) its Collateral Accounts, (2) all Financial Assets credited to its Collateral Accounts from time to time and all Security Entitlements in respect thereof, (3) all cash held in its Collateral Accounts from time to time and (4) all other money in the possession of the Administrative Agent;

(xiii) all right, title, claims and benefits now owned or hereafter acquired by such Original Lien Grantor in and to any railcar leases, subleases, rental agreements and car hire contracts in which such Original Lien Grantor shall at any time have any interest and any right, title, claim and benefits of such Original Lien Grantor now owned or hereafter acquired in and to any management agreement concerning all such leases and agreements (collectively, "**Rolling Stock Leases**"); and all right, title and interest of such Original Lien Grantor in the railcars and equipment, including, without limitation, those railcars listed in Schedule 5 hereto, provided pursuant to any Rolling Stock Leases ("**Leased Rolling Stock**"); in each case, including, without limitation, all rights of such Original Lien Grantor to receive and apply any Rolling Stock Revenues attributable to any Leased Rolling Stock or pursuant to any Rolling Stock Leases;

(xiv) all rights now owned or hereafter acquired by such Original Lien Grantor to receive and collect any Rolling Stock Revenues; and

(xv) all Proceeds of the Collateral described in the foregoing clauses (i) through (xiv);

*provided* that the following property is excluded from the foregoing security interests: (A) voting Equity Interests in any Foreign Subsidiary, to the extent (but only to the extent) required to prevent the Collateral from including more than 66% of all voting Equity Interests in such Foreign Subsidiary and (B) Equipment leased by an Original Lien Grantor under a lease that prohibits the granting of a Lien on such Equipment and any general intangibles or other rights arising under

any contract, instrument, license or other document, in each such case if (but only to the extent that) the grant of a security interest therein would constitute a material violation of a valid and effective restriction in favor of a third party, unless and until all required consents shall have been obtained. Each Original Lien Grantor shall use all reasonable efforts to obtain any such required consent that is reasonably obtainable.

(b) Each Parent Guarantor listed on the signature pages hereof, in order to secure its Secured Guarantee, grants to the Administrative Agent for the benefit of the Secured Parties a continuing security interest in all the following property of such Parent Guarantor, whether now owned or existing or hereafter acquired or arising and regardless of where located:

- (i) all Equity Interests in the Borrower;
- (ii) all Intercompany Notes; and
- (iii) all Proceeds of the Collateral described in the foregoing clauses (i) and (ii).

(c) With respect to each right to payment or performance included in the Collateral from time to time, the Transaction Lien granted therein includes a continuing security interest in (i) any Supporting Obligation that supports such payment or performance and (ii) any Lien that (x) secures such right to payment or performance or (y) secures any such Supporting Obligation.

(d) The Transaction Liens are granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or transfer or in any way affect or modify, any obligation or liability of any Lien Grantor with respect to any of the Collateral or any transaction in connection therewith.

Section 4. *General Representations and Warranties.* Each Original Lien Grantor represents and warrants that:

(a) Such Company Lien Grantor is duly organized, validly existing and in good standing under the laws of the jurisdiction identified as its jurisdiction of organization in its Perfection Certificate. Such Parent Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction identified as its jurisdiction of organization in Schedule 6.

(b) Schedule 1 lists all Equity Interests in the Borrower owned by such Parent Guarantor and Equity Interests in Subsidiaries and Affiliates owned by such Company Lien Grantor as of the Effective Date. Such Lien Grantor holds all such Equity Interests directly (*i.e.*, not through a Subsidiary, a Securities Intermediary or any other Person). In addition, Schedule 1 lists all Intercompany

Notes owned by such Lien Grantor as of the Effective Date. Such Lien Grantor holds all such Intercompany Notes directly.

(c) Schedule 2 lists, as of the Effective Date, (i) all Securities owned by such Company Lien Grantor (except Securities evidencing Equity Interests in Subsidiaries and Affiliates) and (ii) all Securities Accounts to which Financial Assets are credited in respect of which such Company Lien Grantor owns Security Entitlements. Such Company Lien Grantor owns no Commodity Account in respect of which such Company Lien Grantor is the Commodity Customer.

(d) Schedule 3 lists all Instruments (other than Intercompany Loans) owned by such Company Lien Grantor as of the Effective Date.

(e) All Pledged Equity Interests owned by such Lien Grantor are owned by it free and clear of any Lien other than (i) the Transaction Liens and (ii) any inchoate tax liens. All shares of capital stock included in such Pledged Equity Interests (including shares of capital stock in respect of which such Lien Grantor owns a Security Entitlement) have been duly authorized and validly issued and are fully paid and non-assessable. None of such Pledged Equity Interests is subject to any option to purchase or similar right of any Person. Such Lien Grantor is not and will not become a party to or otherwise bound by any agreement (except the Loan Documents) which restricts in any manner the rights of any present or future holder of any Pledged Equity Interest with respect thereto.

(f) All Pledged Instruments owned by such Lien Grantor are owned by it free and clear of any Lien other than (i) the Transaction Liens and (ii) any inchoate tax liens.

(g) Such Lien Grantor has good and marketable title to all its Collateral (subject to exceptions that are, in the aggregate, not material), free and clear of any Lien other than Permitted Liens.

(h) Such Lien Grantor has not performed any acts that might prevent the Administrative Agent from enforcing any of the provisions of the Security Documents or that would limit the Administrative Agent in any such enforcement. No financing statement, security agreement, mortgage or similar or equivalent document or instrument covering all or part of the Collateral owned by such Lien Grantor is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect or record a Lien on such Collateral, except financing statements, mortgages or other similar or equivalent documents with respect to Permitted Liens. After the Effective Date, no Collateral owned by such Lien Grantor will be in the possession or under the Control of any other Person having a claim thereto or security interest therein, other than a Permitted Lien.

(i) The Transaction Liens on all Personal Property Collateral owned by such Lien Grantor (i) have been validly created, (ii) will attach to each item of such Collateral on the Effective Date (or, if such Lien Grantor first obtains rights thereto on a later date, on such later date) and (iii) when so attached, will secure all the Secured Obligations or such Lien Grantor's Secured Guarantee, as the case may be.

(j) When the relevant Mortgages have been duly executed and delivered, the Transaction Liens on all Real Property Collateral owned by such Company Lien Grantor as of the Effective Date will have been validly created and will secure all the Secured Obligations or such Company Lien Grantor's Secured Guarantee, as the case may be. When such Mortgages (and memoranda of lease with respect to any leasehold interests included in such Real Property Collateral) have been duly recorded, such Transaction Liens will rank prior to all other Liens (except Permitted Liens) on such Real Property Collateral.

(k) Such Company Lien Grantor has delivered a Perfection Certificate to the Administrative Agent, and such Parent Guarantor has provided the information required in Schedule 6. The information set forth therein is correct and complete as of the Effective Date. Within 60 days after the Effective Date, such Lien Grantor will furnish to the Administrative Agent a file search report from each UCC filing office listed in its Perfection Certificate or Schedule 6, as applicable, showing the filing made at such filing office to perfect the Transaction Liens on its Collateral.

(l) When UCC financing statements describing the Collateral as set forth in Schedule 3 to such Company Lien Grantor's Perfection Certificate with respect to such Company Lien Grantor or Schedule 6 with respect to such Parent Guarantor, as applicable, have been filed in the offices specified in such Perfection Certificate or in Schedule 6, as applicable, the Transaction Liens will constitute perfected security interests in the Personal Property Collateral owned by such Lien Grantor to the extent that a security interest therein may be perfected by filing pursuant to the UCC, prior to all Liens and rights of others therein except Permitted Liens. When, in addition to the filing of such UCC financing statements, the applicable Intellectual Property Filings have been made with respect to such Company Lien Grantor's Recordable Intellectual Property (including any future filings required pursuant to Sections 5(a) and 9(a)), the Transaction Liens will constitute perfected security interests in all right, title and interest of such Company Lien Grantor in its Recordable Intellectual Property to the extent that security interests therein may be perfected by such filings, prior to all Liens and rights of others therein except Permitted Liens. Except for (i) the filing of such UCC financing statements, (ii) such Intellectual Property Filings and (iii) the due recordation of the Mortgages and the due recordation of memoranda of lease with respect of the Pledged leasehold interests, no



registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of the Security Documents or is necessary for the validity or enforceability thereof or for the perfection or due recordation of the Transaction Liens or for the enforcement of the Transaction Liens.

(m) Such Company Lien Grantor has taken, and will continue to take, all actions necessary under the UCC to perfect its interest in any Accounts or Chattel Paper purchased or otherwise acquired by it, as against its assignors and creditors of its assignors.

(n) Such Company Lien Grantor's Collateral is insured as required by the Credit Agreement.

(o) All of such Company Lien Grantor's Inventory has or will have been produced in compliance with the applicable requirements of the Fair Labor Standards Act, as amended.

Section 5. *Further Assurances; General Covenants.* Each Lien Grantor covenants as follows:

(a) Such Lien Grantor will, from time to time, at such Lien Grantor's expense, execute, deliver, file and record any statement, assignment, instrument, document, agreement or other paper and take any other action (including any Intellectual Property Filing and any filing of financing or continuation statements under the UCC) that from time to time may be necessary or desirable, or that the Administrative Agent may request, in order to:

(i) create, preserve, perfect, confirm or validate the Transaction Liens on such Lien Grantor's Collateral;

(ii) in the case of Pledged Deposit Accounts and Pledged Investment Property, cause the Administrative Agent to have Control thereof;

(iii) enable the Administrative Agent and the other Secured Parties to obtain the full benefits of the Security Documents; or

(iv) enable the Administrative Agent to exercise and enforce any of its rights, powers and remedies with respect to any of such Lien Grantor's Collateral.

To the extent permitted by applicable law, such Lien Grantor authorizes the Administrative Agent to execute and file such financing statements or continuation statements without such Lien Grantor's signature appearing thereon.

Such Lien Grantor agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. Such Lien Grantor constitutes the Administrative Agent its attorney-in-fact to execute and file all Intellectual Property Filings and other filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until all the Transaction Liens granted by such Lien Grantor terminate pursuant to Section 24. The Borrower will pay the costs of, or incidental to, any Intellectual Property Filings and any recording or filing of any financing or continuation statements or other documents recorded or filed pursuant hereto.

(b) Such Lien Grantor will not (i) change its name or corporate structure, (ii) change its location (determined as provided in UCC Section 9-307) or (iii) become bound, as provided in UCC Section 9-203(d) or otherwise, by a security agreement entered into by another Person, unless it shall have given the Administrative Agent not less than 30 days' prior notice thereof and delivered an Opinion of Counsel with respect thereto in accordance with Section 5(c).

(c) No more than six months nor less than 10 days before it takes any action contemplated by Section 5(b), such Lien Grantor will, at its expense, cause to be delivered to the Administrative Agent an Opinion of Counsel, in form and substance satisfactory to the Administrative Agent (such Lien Grantor's general counsel being deemed to be satisfactory unless the Administrative Agent notifies such Lien Grantor otherwise), to the effect that (i) all financing statements and amendments or supplements thereto, continuation statements and other documents required to be filed or recorded in order to perfect and protect the Transaction Liens for a period (and after giving effect to the proposed action that is the subject of such notice), specified in such opinion, continuing until a date not earlier than eighteen months from the date of such opinion, against all creditors of and purchasers from such Lien Grantor after it takes such action (except any continuation statements specified in such Opinion of Counsel that are to be filed more than six months after the date thereof) have been filed or recorded in each office necessary for such purpose, (ii) all fees and taxes, if any, payable in connection with such filings or recordings have been paid in full and (iii) except as otherwise agreed by the Required Lenders, such action will not adversely affect the perfection or priority of the Transaction Lien on any Collateral to be owned by such Lien Grantor after it takes such action or the accuracy of such Lien Grantor's representations and warranties herein relating to such Collateral.

(d) If any of its Collateral is in the possession or control of a warehouseman, bailee or agent at any time, such Company Lien Grantor will, upon the request of the Administrative Agent acting on the instructions of the Required Lenders, (i) notify such warehouseman, bailee or agent of the relevant

Transaction Liens, (ii) instruct such warehouseman, bailee or agent to hold all such Collateral for the Administrative Agent's account subject to the Administrative Agent's instructions (which shall permit such Collateral to be removed by such Company Lien Grantor in the ordinary course of business until the Administrative Agent notifies such warehouseman, bailee or agent that an Event of Default has occurred and is continuing), (iii) cause such warehouseman, bailee or agent to Authenticate a Record acknowledging that it holds possession of such Collateral for the Administrative Agent's benefit and (iv) make such Authenticated Record available to the Administrative Agent.

(e) Such Lien Grantor will not sell, lease, exchange, assign or otherwise dispose of, or grant any option with respect to, any of its Collateral; *provided* that such Lien Grantor may do any of the foregoing unless (i) doing so would violate a covenant in the Credit Agreement or (ii) an Event of Default shall have occurred and be continuing and the Administrative Agent shall have notified such Lien Grantor that its right to do so is terminated, suspended or otherwise limited. Concurrently with any sale, lease or other disposition (except a sale or disposition to another Lien Grantor or a lease) permitted by the foregoing *proviso*, the Transaction Liens on the assets sold or disposed of (but not in any Proceeds arising from such sale or disposition) will cease immediately without any action by the Administrative Agent or any other Secured Party. The Administrative Agent will, at the Borrower's expense, execute and deliver to the relevant Lien Grantor such documents as such Lien Grantor shall reasonably request to evidence the fact that any asset so sold or disposed of is no longer subject to a Transaction Lien. Notwithstanding the foregoing, (x) no Company Lien Grantor shall sell, lease, exchange, assign or otherwise dispose of, or grant any option with respect to, any of its Pledged Equity Interests to any of its Affiliates unless such Affiliate executes and delivers a Security Agreement Supplement pursuant to which such Person becomes a "Subsidiary Guarantor" and a "Lien Grantor" and takes such other action, including delivery of an Opinion of Counsel, as the Administrative Agent may request and (y) no Parent Guarantor shall sell, lease, exchange, assign or otherwise dispose of, or grant any option with respect to, any of its Pledged Equity Interests to any Person unless such Person executes and delivers a Security Agreement Supplement pursuant to which such Person becomes a "Parent Guarantor" and a "Lien Grantor" and takes such other action, including delivery of an Opinion of Counsel, as the Administrative Agent may request; *provided* that a Parent Guarantor may dispose of its Pledged Equity Interests to the Borrower pursuant to a redemption of Equity Interests permitted by the Credit Agreement so long as such Parent Guarantor pledges any other Equity Interests of the Borrower received in exchange for or purchased with the proceeds of such redemption.

(f) Such Lien Grantor will, promptly upon request, provide to the Administrative Agent all information and evidence concerning such Lien

Grantor's Collateral that the Administrative Agent may reasonably request from time to time to enable it to enforce the provisions of the Security Documents.

(g) From time to time upon request by the Administrative Agent, such Lien Grantor will, at the Borrower's expense, cause to be delivered to the Secured Parties an Opinion of Counsel satisfactory to the Administrative Agent as to such matters relating to the transactions contemplated hereby as the Administrative Agent may reasonably request.

Section 6. *Accounts.* Each Company Lien Grantor represents, warrants and covenants as follows:

(a) Such Company Lien Grantor will use best efforts to cause to be collected from its account debtors, when due, all amounts owing under its Accounts (including delinquent Accounts, which will be collected in accordance with lawful collection procedures) and will apply all amounts collected thereon, forthwith upon receipt thereof, to the outstanding balances of such Accounts. Subject to the rights of the Administrative Agent and the other Secured Parties hereunder if an Event of Default shall have occurred and be continuing, such Company Lien Grantor may allow in the ordinary course of business as adjustments to amounts owing under its Accounts (i) any extension or renewal of the time or times for payment, or settlement for less than the total unpaid balance, that such Company Lien Grantor finds appropriate in accordance with sound business judgment and (ii) refunds or credits, all in the ordinary course of business and consistent with such Company Lien Grantor's historical collection practices. The costs and expenses (including attorney's fees) of collection, whether incurred by such Company Lien Grantor or the Administrative Agent, shall be paid by such Company Lien Grantor.

(b) If payments with respect to any of such Company Lien Grantor's Accounts or in respect of Rolling Stock Revenues are received in a lockbox or similar account, such Company Lien Grantor will (i) at all times cause such account to be a Controlled Deposit Account with the Administrative Agent or one of its Affiliates and (ii) cause the relevant depository bank to subordinate to the relevant Transaction Lien all its claims to such account (except its right to deduct its normal operating charges and any uncollected funds previously credited thereto). The Administrative Agent will instruct the relevant depository bank to transfer funds credited to any such account, as promptly as practicable after receipt thereof, to a Controlled Deposit Account designated by such Company Lien Grantor; *provided that*, if an Event of Default shall have occurred and be continuing, the Administrative Agent may designate the Controlled Deposit Account to which such funds are transferred.

(c) If an Event of Default shall have occurred and be continuing, such Company Lien Grantor will, if requested to do so by the Administrative Agent acting on the instructions of the Required Lenders, promptly notify (and such Company Lien Grantor authorizes the Administrative Agent so to notify) each account debtor in respect of any of its Accounts that such Accounts have been assigned to the Administrative Agent hereunder, and that any payments due or to become due in respect of such Accounts are to be made directly to the Administrative Agent or its designee.

Section 7. *Commercial Tort Claims.* Each Company Lien Grantor represents, warrants and covenants as follows:

(a) In the case of an Original Company Lien Grantor, Schedule 4 accurately describes, with the specificity required to satisfy Official Comment 5 to UCC Section 9-108, each Commercial Tort Claim with respect to which such Original Company Lien Grantor is the claimant as of the Effective Date. In the case of any other Company Lien Grantor, Schedule 4 to its first Security Agreement Supplement will accurately describe, with the specificity required to satisfy said Official Comment 5, each Commercial Tort Claim with respect to which such Company Lien Grantor is the claimant as of the date on which it signs and delivers such Security Agreement Supplement.

(b) If any Company Lien Grantor acquires a Commercial Tort Claim after the Effective Date (in the case of an Original Company Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Company Lien Grantor), such Company Lien Grantor will promptly sign and deliver to the Administrative Agent a Security Agreement Supplement granting a security interest in such Commercial Tort Claim (which shall be described therein with the specificity required to satisfy said Official Comment 5) to the Administrative Agent for the benefit of the Secured Parties.

(c) Upon the filing of a UCC financing statement in the jurisdiction under the laws of which the relevant Company Lien Grantor is organized, the Transaction Lien on each Commercial Tort Claim described pursuant to subsection (a) or (b) above will be perfected, subject to no prior Liens or rights of others.

Section 8. *Equipment; Rolling Stock.*

(a) Each Company Lien Grantor shall, (i) as soon as practicable after the date hereof, in the case of Equipment now owned constituting goods in which a security interest is perfected by a notation on the certificate of title or similar evidence of the ownership of such goods, and (ii) within 10 days of acquiring any other similar Equipment, in each case, (a) having a value in excess of \$50,000 or

(b) having a value in excess of \$25,000, if the aggregate of all such items owned by such Company Lien Grantor at any time is greater than \$100,000, deliver to the Administrative Agent any and all certificates of title, applications for title or similar evidence of ownership of such Equipment and shall cause the Administrative Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Such Company Lien Grantor shall promptly inform the Administrative Agent of any additions to or deletions from the Equipment and shall not permit any such items to become a fixture to real estate other than real estate described in the Mortgages.

(b) Each Company Lien Grantor shall as soon as practicable after the date hereof, at its own cost and expense, cause to be plainly, distinctly, permanently and conspicuously placed, fastened or painted upon each side of each item of Rolling Stock a legend bearing such words as the Administrative Agent may request indicating the Lien over and security interest in such Rolling Stock created hereby in letters not less than one inch in height. Each Company Lien Grantor may permit the Rolling Stock to be operated within the United States, but shall not permit the Rolling Stock to be operated outside the boundaries of the continental United States.

(c) Within five (5) Business Days of entering into, amending, modifying or terminating any Rolling Stock Lease, each Company Lien Grantor will deliver a copy of such Rolling Stock Lease, amendment or modification or notice of such termination to the Administrative Agent.

Section 9. *Recordable Intellectual Property.* Each Company Lien Grantor covenants as follows:

(a) On the Effective Date (in the case of an Original Company Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Company Lien Grantor), such Company Lien Grantor will sign and deliver to the Administrative Agent Intellectual Property Security Agreements with respect to all Recordable Intellectual Property then owned by it. Within 30 days after each March 31 and September 30 thereafter, it will sign and deliver to the Administrative Agent an appropriate Intellectual Property Security Agreement covering any Recordable Intellectual Property owned by it on such March 31 or September 30 that is not covered by any previous Intellectual Property Security Agreement so signed and delivered by it. In each case, it will promptly make all Intellectual Property Filings necessary to record the Transaction Liens on such Recordable Intellectual Property.

(b) Such Company Lien Grantor will notify the Administrative Agent promptly if it knows, or has reason to know, that any application or registration relating to any Recordable Intellectual Property owned or licensed by it may

become abandoned or dedicated to the public, or of any adverse determination or development (including the institution of, or any adverse determination or development in, any proceeding in the United States Copyright Office, the United States Patent and Trademark Office or any court) regarding such Company Lien Grantor's ownership of such Recordable Intellectual Property, its right to register or patent the same, or its right to keep and maintain the same. If any of such Company Lien Grantor's rights to any Recordable Intellectual Property are infringed, misappropriated or diluted by a third party, such Company Lien Grantor will notify the Administrative Agent promptly after it learns thereof and will, unless such Company Lien Grantor shall reasonably determine that such action would be of negligible value, economic or otherwise, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as such Company Lien Grantor shall reasonably deem appropriate under the circumstances to protect such Recordable Intellectual Property.

Section 10. *Investment Property.* Each Lien Grantor represents, warrants and covenants as follows:

(a) *Certificated Securities.* On the Effective Date (in the case of an Original Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Lien Grantor), such Lien Grantor will deliver to the Administrative Agent as Collateral hereunder all certificates representing Pledged Certificated Securities then owned by such Lien Grantor. Thereafter, whenever such Lien Grantor acquires any other certificate representing a Pledged Certificated Security, such Lien Grantor will immediately deliver such certificate to the Administrative Agent as Collateral hereunder. The provisions of this subsection are subject to the limitation in Section 10(j) in the case of voting Equity Interests in a Foreign Subsidiary.

(b) *Uncertificated Securities.* On the Effective Date (in the case of an Original Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Lien Grantor), such Lien Grantor will enter into (and cause the relevant issuer to enter into) an Issuer Control Agreement in respect of each Pledged Uncertificated Security then owned by such Lien Grantor and deliver such Issuer Control Agreement to the Administrative Agent (which shall enter into the same). Thereafter, whenever such Lien Grantor acquires any other Pledged Uncertificated Security, such Lien Grantor will enter into (and cause the relevant issuer to enter into) an Issuer Control Agreement in respect of such Pledged Uncertificated Security and deliver such Issuer Control Agreement to the Administrative Agent (which shall enter into the same). The provisions of this subsection are subject to the limitation in Section 10(j) in the case of voting Equity Interests in a Foreign Subsidiary.

(c) *Security Entitlements.* On the Effective Date (in the case of an Original Company Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Company Lien Grantor), such Company Lien Grantor will, with respect to each Security Entitlement then owned by it, enter into (and cause the relevant Securities Intermediary to enter into) a Securities Account Control Agreement in respect of such Security Entitlement and the Securities Account to which the underlying Financial Asset is credited and will deliver such Securities Account Control Agreement to the Administrative Agent (which shall enter into the same). Thereafter, whenever such Company Lien Grantor acquires any other Security Entitlement, such Company Lien Grantor will, as promptly as practicable, cause the underlying Financial Asset to be credited to a Controlled Securities Account.

(d) *Perfection as to Certificated Securities.* When such Lien Grantor delivers the certificate representing any Pledged Certificated Security owned by it to the Administrative Agent and complies with Section 10(j) in connection with such delivery, (i) the Transaction Lien on such Pledged Certificated Security will be perfected, subject to no prior Liens or rights of others, (ii) the Administrative Agent will have Control of such Pledged Certificated Security and (iii) the Administrative Agent will be a protected purchaser (within the meaning of UCC Section 8-303) thereof.

(e) *Perfection as to Uncertificated Securities.* When such Lien Grantor, the Administrative Agent and the issuer of any Pledged Uncertificated Security owned by such Lien Grantor enter into an Issuer Control Agreement with respect thereto, (i) the Transaction Lien on such Pledged Uncertificated Security will be perfected, subject to no prior Liens or rights of others, (ii) the Administrative Agent will have Control of such Pledged Uncertificated Security and (iii) the Administrative Agent will be a protected purchaser (within the meaning of UCC Section 8-303) thereof.

(f) *Perfection as to Security Entitlements.* So long as the Financial Asset underlying any Security Entitlement owned by such Company Lien Grantor is credited to a Controlled Securities Account, (i) the Transaction Lien on such Security Entitlement will be perfected, subject to no prior Liens or rights of others (except Liens and rights of the relevant Securities Intermediary that are Permitted Liens), (ii) the Administrative Agent will have Control of such Security Entitlement and (iii) no action based on an adverse claim to such Security Entitlement or such Financial Asset, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may be asserted against the Administrative Agent or any other Secured Party.

(g) *Agreement as to Applicable Jurisdiction.* In respect of all Security Entitlements owned by such Company Lien Grantor, and all Securities Accounts



to which the related Financial Assets are credited, the Securities Intermediary's jurisdiction (determined as provided in UCC Section 8-110(e)) will at all times be located in the United States.

(h) *Delivery of Pledged Certificates.* All certificates representing Pledged Certificated Securities, when delivered to the Administrative Agent, will be in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, all in form and substance satisfactory to the Administrative Agent.

(i) *Communications.* Each Lien Grantor will promptly give to the Administrative Agent copies of any notices and other communications received by it with respect to (i) Pledged Securities registered in the name of such Lien Grantor or its nominee and (ii) Pledged Security Entitlements as to which such Lien Grantor is the Entitlement Holder.

(j) *Foreign Subsidiaries.* A Company Lien Grantor will not be obligated to comply with the provisions of this Section at any time with respect to any voting Equity Interest in a Foreign Subsidiary if and to the extent (but only to the extent) that such voting Equity Interest is excluded from the Transaction Liens at such time pursuant to clause (A) of the proviso at the end of Section 3(a) and/or the comparable provisions of one or more Security Agreement Supplements.

(k) *Compliance with Applicable Foreign Laws.* If and so long as the Collateral includes (i) any Equity Interest in, or other Investment Property issued by, a legal entity organized under the laws of a jurisdiction outside the United States or (ii) any Security Entitlement in respect of a Financial Asset issued by such a foreign legal entity, the relevant Lien Grantor will take all such action as may be required under the laws of such foreign jurisdiction to ensure that the Transaction Lien on such Collateral ranks prior to all Liens and rights of others therein.

#### Section 11. *Instruments.*

(a) On the Effective Date (in the case of an Original Lien Grantor) or the date on which it signs and delivers its first Security Agreement Supplement (in the case of any other Lien Grantor), such Lien Grantor will deliver to the Administrative Agent as Collateral hereunder all Intercompany Notes then owned by such Lien Grantor. In the event that any Lien Grantor owes any Debt to any other Lien Grantor, the Lien Grantor to which such Debt is owed will immediately pledge and deposit or cause to be immediately pledged and deposited with the Administrative Agent instruments or notes evidencing such Debt as additional security for the Secured Obligations. All such instruments or notes

constitute Pledged Instruments and are subject to the provisions of this Agreement.

(b) Each Company Lien Grantor will immediately deliver and pledge each Instrument (other than the Intercompany Notes, which shall be subject to clause (a) of this Section 11) to the Administrative Agent, appropriately endorsed to the Administrative Agent, *provided* that so long as no Event of Default shall have occurred and be continuing, each Company Lien Grantor may retain for collection in the ordinary course any such Instruments received by it in the ordinary course of business and the Administrative Agent shall, promptly upon request of any Company Lien Grantor, make appropriate arrangements for making any other Instrument pledged by such Company Lien Grantor available to it for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent deemed appropriate to the Administrative Agent, against trust receipt or like document).

(c) All Instruments delivered to the Administrative Agent by a Lien Grantor pursuant to this Agreement shall be accompanied by duly executed instruments of transfer or assignment in blank in form and substance satisfactory to the Administrative Agent.

Section 12. *Controlled Deposit Accounts.* Each Company Lien Grantor represents, warrants and covenants as follows:

(a) All cash owned by such Company Lien Grantor will be deposited, upon or promptly after the receipt thereof, in one or more Controlled Deposit Accounts. Each Controlled Deposit Account will be operated as provided in Section 14.

(b) In respect of each Controlled Deposit Account, the Depositary Bank's jurisdiction (determined as provided in UCC Section 9-304) will at all times be a jurisdiction in which Article 9 of the Uniform Commercial Code is in effect.

(c) So long as the Administrative Agent has Control of a Controlled Deposit Account, the Transaction Lien on such Controlled Deposit Account will be perfected, subject to no prior Liens or rights of others (except the Depositary Bank's right to deduct its normal operating charges and any uncollected funds previously credited thereto).

Section 13. *Cash Collateral Accounts.* (a) If and when required for purposes hereof, the Administrative Agent will establish with respect to each Lien Grantor an account (its "**Cash Collateral Account**") in the name and under the exclusive control of the Administrative Agent, into which all amounts owned by

such Lien Grantor that are to be deposited therein pursuant to the Loan Documents shall be deposited from time to time. Each Cash Collateral Account will be operated as provided in this Section and Section 14.

(b) The Administrative Agent shall deposit the following amounts, as and when received by it, in the Borrower's Cash Collateral Account:

(i) each amount required by Section 2.05(j) of the Credit Agreement to be deposited therein to cover outstanding LC Reimbursement Obligations;

(ii) each Cash Distribution required by Section 17 to be deposited therein; and

(iii) each amount realized or otherwise received by the Administrative Agent with respect to assets of the Borrower upon any exercise of remedies pursuant to any Security Document.

(c) The Administrative Agent shall deposit in the Cash Collateral Account of each Lien Grantor (other than the Borrower):

(i) each Cash Distribution required by Section 17 to be deposited therein; and

(ii) each amount realized or otherwise received by the Administrative Agent with respect to assets of such Lien Grantor upon any exercise of remedies pursuant to any Security Document.

(d) The Administrative Agent shall maintain such records and/or establish such sub-accounts as shall be required to enable it to identify the amounts held in each Cash Collateral Account from time to time pursuant to each clause of subsection (b) or (c) of this Section, as applicable.

(e) Unless (x) an Event of Default shall have occurred and be continuing and the Required Lenders shall have instructed the Administrative Agent to stop withdrawing amounts from the Cash Collateral Accounts pursuant to this subsection or (y) the maturity of the Loans shall have been accelerated pursuant to Article 7 of the Credit Agreement, the Administrative Agent shall withdraw amounts from the Cash Collateral Accounts and apply them for the following purposes:

(i) any amount deposited pursuant to Section 2.05(j) of the Credit Agreement to cover outstanding LC Reimbursement Obligations shall be withdrawn and applied to pay such LC Reimbursement Obligations as they become due; *provided* that such amount (to the extent

not theretofore so applied) shall be withdrawn and returned to the Borrower if and when permitted by said Section 2.05(j); and

(ii) any Cash Distribution deposited pursuant to Section 17 shall, at the relevant Lien Grantor's request, (x) be withdrawn and applied to pay Secured Obligations that are then due and payable or (y) if no Event of Default has occurred and is continuing, be withdrawn and returned to such Lien Grantor.

Section 14. *Operation of Collateral Accounts.* (a) All Cash Distributions received with respect to assets held in any Collateral Account shall be deposited therein promptly upon receipt thereof.

(b) Funds held in any Controlled Securities Account may, until withdrawn, be invested and reinvested in such Permitted Investments as the relevant Company Lien Grantor shall request from time to time; *provided* that, if an Event of Default shall have occurred and be continuing, Administrative Agent may select such Permitted Investments.

(c) Funds held in any Controlled Deposit Account or Cash Collateral Account may, until withdrawn, be invested and reinvested in such Permitted Investments as the relevant Lien Grantor shall request from time to time; *provided* that if an Event of Default shall have occurred and be continuing, Administrative Agent may select such Permitted Investments.

(d) With respect to each Collateral Account (except a Cash Collateral Account, as to which Section 13 applies), the Administrative Agent will instruct the relevant Securities Intermediary or Depositary Bank that the relevant Company Lien Grantor may withdraw, or direct the disposition of, funds held therein unless and until the Administrative Agent rescinds such instruction. The Administrative Agent will not rescind such instructions unless an Event of Default shall have occurred and be continuing.

(e) If an Event of Default shall have occurred and be continuing, the Administrative Agent may (i) retain, or instruct the relevant Securities Intermediary or Depositary Bank to retain, all cash and investments then held in any Collateral Account, (ii) liquidate, or instruct the relevant Securities Intermediary or Depositary Bank to liquidate, any or all investments held therein and/or (iii) withdraw any amounts held therein and apply such amounts as provided in Section 19.

(f) If immediately available cash on deposit in any Collateral Account is not sufficient to make any distribution or withdrawal to be made pursuant hereto, the Administrative Agent will cause to be liquidated, as promptly as

practicable, such investments held in or credited to such Collateral Account as shall be required to obtain sufficient cash to make such distribution or withdrawal and, notwithstanding any other provision hereof, such distribution or withdrawal shall not be made until such liquidation has taken place.

Section 15. *Transfer of Record Ownership.* At any time when an Event of Default shall have occurred and be continuing, the Administrative Agent may (and to the extent that action by it is required, the relevant Lien Grantor, if directed to do so by the Administrative Agent, will as promptly as practicable) cause each of the Pledged Securities (or any portion thereof specified in such direction) to be transferred of record into the name of the Administrative Agent or its nominee. Each Lien Grantor will take any and all actions reasonably requested by the Administrative Agent to facilitate compliance with this Section. If the provisions of this Section are implemented, Section 10(b) shall not thereafter apply to any Pledged Security that is registered in the name of the Administrative Agent or its nominee. The Administrative Agent will promptly give to the relevant Lien Grantor copies of any notices and other communications received by the Administrative Agent with respect to Pledged Securities registered in the name of the Administrative Agent or its nominee.

Section 16. *Right to Vote Securities.* (a) Unless an Event of Default shall have occurred and be continuing, each Lien Grantor will have the right, from time to time, to vote and to give consents, ratifications and waivers with respect to any Pledged Security owned by it and the Financial Asset underlying any Pledged Security Entitlement owned by it, and the Administrative Agent will, upon receiving a written request from such Lien Grantor, deliver to such Lien Grantor or as specified in such request such proxies, powers of attorney, consents, ratifications and waivers in respect of any such Pledged Security that is registered in the name of the Administrative Agent or its nominee or any such Pledged Security Entitlement as to which the Administrative Agent or its nominee is the Entitlement Holder, in each case as shall be specified in such request and be in form and substance satisfactory to the Administrative Agent. Unless an Event of Default shall have occurred and be continuing, the Administrative Agent will have no right to take any action which the owner of a Pledged Partnership Interest or Pledged LLC Interest is entitled to take with respect thereto, except the right to receive payments and other distributions to the extent provided herein.

(b) If an Event of Default shall have occurred and be continuing, the Administrative Agent will have the right to the extent permitted by law (and, in the case of a Pledged Partnership Interest or Pledged LLC Interest, by the relevant partnership agreement, limited liability company agreement, operating agreement or other governing document) to vote, to give consents, ratifications and waivers and to take any other action with respect to the Pledged Investment Property, the other Pledged Equity Interests (if any) and the Financial Assets underlying the

Pledged Security Entitlements, with the same force and effect as if the Administrative Agent were the absolute and sole owner thereof, and each Lien Grantor will take all such action as the Administrative Agent may reasonably request from time to time to give effect to such right.

Section 17. *Certain Cash Distributions.* Cash Distributions with respect to assets held in a Collateral Account shall be deposited and held therein, or withdrawn therefrom, as provided in Section 14. Cash Distributions with respect to any Pledged Equity Interest or Pledged Debt that is not held in a Collateral Account (whether held in the name of a Lien Grantor or in the name of the Administrative Agent or its nominee) shall be deposited, in the case of Cash Distributions with respect to any Pledged Equity Interest or Pledged Debt that is Collateral of a Company Lien Grantor, promptly upon receipt thereof, in a Controlled Deposit Account of the relevant Company Lien Grantor; *provided that*, if an Event of Default shall have occurred and be continuing, the Administrative Agent may deposit, or direct the recipient thereof to deposit, each such Cash Distribution in respect of any Pledged Equity Interest or Pledged Debt of any Lien Grantor in the relevant Lien Grantor's Cash Collateral Account.

Section 18. *Remedies upon Event of Default.* (a) If an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise (or cause its sub-agents to exercise) any or all of the remedies available to it (or to such sub-agents) under the Security Documents.

(b) Without limiting the generality of the foregoing, if an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise on behalf of the Secured Parties all the rights of a secured party under the UCC (whether or not in effect in the jurisdiction where such rights are exercised) with respect to any Personal Property Collateral and, in addition, the Administrative Agent may, without being required to give any notice, except as herein provided or as may be required by mandatory provisions of law, withdraw all cash held in the Collateral Accounts and apply such cash as provided in Section 19 and, if there shall be no such cash or if such cash shall be insufficient to pay all the Secured Obligations in full, sell, lease, license or otherwise dispose of the Collateral or any part thereof. Notice of any such sale or other disposition shall be given to the relevant Lien Grantor(s) as required by Section 21. The foregoing provisions of this subsection shall apply to Real Property Collateral only to the extent permitted by applicable law and the provisions of any applicable Mortgage or other document.

(c) Without limiting the generality of the foregoing, if an Event of Default shall have occurred and be continuing:

(i) the Administrative Agent may license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Pledged intellectual property (including any Pledged Recordable Intellectual Property) throughout the world for such term or terms, on such conditions and in such manner as the Administrative Agent shall in its sole discretion determine; *provided that* such licenses or sublicenses do not conflict with any existing license of which the Administrative Agent shall have received a copy;

(ii) the Administrative Agent may (without assuming any obligation or liability thereunder), at any time and from time to time, in its sole and reasonable discretion, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of any Company Lien Grantor in, to and under any of its Pledged intellectual property and take or refrain from taking any action under any thereof, and each Company Lien Grantor releases the Administrative Agent and each other Secured Party from liability for, and agrees to hold the Administrative Agent and each other Secured Party free and harmless from and against any claims and expenses arising out of, any lawful action so taken or omitted to be taken with respect thereto, except for claims and expenses arising from the Administrative Agent's or such Secured Party's gross negligence or willful misconduct; and

(iii) upon request by the Administrative Agent (which shall not be construed as implying any limitation on its rights or powers), each Company Lien Grantor will execute and deliver to the Administrative Agent a power of attorney, in form and substance satisfactory to the Administrative Agent, for the implementation of any sale, lease, license or other disposition of any of such Company Lien Grantor's Pledged intellectual property or any action related thereto. In connection with any such disposition, but subject to any confidentiality restrictions imposed on such Company Lien Grantor in any license or similar agreement, such Company Lien Grantor will supply to the Administrative Agent its know-how and expertise relating to the relevant intellectual property or the products or services made or rendered in connection with such intellectual property, and its customer lists and other records relating to such intellectual property and to the distribution of said products or services.

Section 19. *Application of Proceeds.* (a) If an Event of Default shall have occurred and be continuing, the Administrative Agent may apply (i) any cash held in the Collateral Accounts and (ii) the proceeds of any sale or other disposition of all or any part of the Collateral, in the following order of priorities:

*first*, to pay the expenses of such sale or other disposition, including reasonable compensation to agents of and counsel for the Administrative Agent, and all expenses, liabilities and advances incurred or made by the Administrative Agent in connection with the Security Documents, and any other amounts then due and payable to the Administrative Agent pursuant to Section 20 or pursuant to Section 9.03 of the Credit Agreement;

*second*, to pay ratably the unpaid principal of and interest (including Post-Petition Interest) on the Loans and LC Reimbursement Obligations and payments under Designated Hedging Agreements (or provide for the payment thereof pursuant to Section 19(b)), until payment in full of all such principal, interest and payments shall have been made (or so provided for);

*third*, to pay all other Secured Obligations ratably (or provide for the payment thereof pursuant to Section 19(b)), until payment in full of all such other Secured Obligations shall have been made (or so provided for); and

*finally*, to pay to the relevant Lien Grantor, or as a court of competent jurisdiction may direct, any surplus then remaining from the proceeds of the Collateral owned by it;

*provided* that Collateral owned by a Subsidiary Guarantor and any proceeds thereof shall be applied pursuant to the foregoing clauses *first*, *second* and *third* only to the extent permitted by the limitation in Section 2(i). The Administrative Agent may make such distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

(b) If at any time any portion of any monies collected or received by the Administrative Agent would, but for the provisions of this Section 19(b), be payable pursuant to Section 19(a) in respect of a Contingent Secured Obligation, the Administrative Agent shall not apply any monies to pay such Contingent Secured Obligation but instead shall request the holder thereof, at least 10 days before each proposed distribution hereunder, to notify the Administrative Agent as to the maximum amount of such Contingent Secured Obligation if then ascertainable (*e.g.*, in the case of a letter of credit, the maximum amount available for subsequent drawings thereunder). If the holder of such Contingent Secured Obligation does not notify the Administrative Agent of the maximum ascertainable amount thereof at least two Business Days before such distribution, such holder will not be entitled to share in such distribution. If such holder does so notify the Administrative Agent as to the maximum ascertainable amount thereof, the Administrative Agent will allocate to such holder a portion of the



monies to be distributed in such distribution, calculated as if such Contingent Secured Obligation were outstanding in such maximum ascertainable amount. However, the Administrative Agent will not apply such portion of such monies to pay such Contingent Secured Obligation, but instead will hold such monies or invest such monies in Permitted Investments. All such monies and Permitted Investments and all proceeds thereof will constitute Collateral hereunder, but will be subject to distribution in accordance with this Section 19(b) rather than Section 19(a). The Administrative Agent will hold all such monies and Permitted Investments and the net proceeds thereof in trust until all or part of such Contingent Secured Obligation becomes a Non-Contingent Secured Obligation, whereupon the Administrative Agent at the request of the relevant Secured Party will apply the amount so held in trust to pay such Non-Contingent Secured Obligation; *provided* that, if the other Secured Obligations theretofore paid pursuant to the same clause of Section 19(a) (*i.e.*, clause *second* or *third*) were not paid in full, the Administrative Agent will apply the amount so held in trust to pay the same percentage of such Non-Contingent Secured Obligation as the percentage of such other Secured Obligations theretofore paid pursuant to the same clause of Section 19(a). If (i) the holder of such Contingent Secured Obligation shall advise the Administrative Agent that no portion thereof remains in the category of a Contingent Secured Obligation and (ii) the Administrative Agent still holds any amount held in trust pursuant to this Section 19(b) in respect of such Contingent Secured Obligation (after paying all amounts payable pursuant to the preceding sentence with respect to any portions thereof that became Non-Contingent Secured Obligations), such remaining amount will be applied by the Administrative Agent in the order of priorities set forth in Section 19(a).

(c) In making the payments and allocations required by this Section, the Administrative Agent may rely upon information supplied to it pursuant to Section 23(c). All distributions made by the Administrative Agent pursuant to this Section shall be final (except in the event of manifest error) and the Administrative Agent shall have no duty to inquire as to the application by any Secured Party of any amount distributed to it.

Section 20. *Fees and Expenses; Indemnification.* (a) The Borrower will forthwith upon demand pay to the Administrative Agent:

(i) the amount of any taxes that the Administrative Agent may have been required to pay by reason of the Transaction Liens or to free any Collateral from any other Lien thereon;

(ii) the amount of any and all reasonable out-of-pocket expenses, including transfer taxes and reasonable fees and expenses of counsel and other experts, that the Administrative Agent may incur in connection with (x) the administration or enforcement of the Security

Documents, including such expenses as are incurred to preserve the value of the Collateral or the validity, perfection, rank or value of any Transaction Lien, (y) the collection, sale or other disposition of any Collateral or (z) the exercise by the Administrative Agent of any of its rights or powers under the Security Documents;

(iii) the amount of any fees that the Borrower shall have agreed in writing to pay to the Administrative Agent and that shall have become due and payable in accordance with such written agreement; and

(iv) the amount required to indemnify the Administrative Agent for, or hold it harmless and defend it against, any loss, liability or expense (including the reasonable fees and expenses of its counsel and any experts or sub-agents appointed by it hereunder) incurred or suffered by the Administrative Agent in connection with the Security Documents, except to the extent that such loss, liability or expense arises from the Administrative Agent's gross negligence or willful misconduct or a breach of any duty that the Administrative Agent has under this Agreement (after giving effect to Section 22 and Section 23).

Any such amount not paid to the Administrative Agent on demand will bear interest for each day thereafter until paid at a rate per annum equal to the sum of 2% plus the rate applicable to Base Rate Loans for such day.

(b) If any transfer tax, documentary stamp tax or other tax is payable in connection with any transfer or other transaction provided for in the Security Documents, the Borrower will pay such tax and provide any required tax stamps to the Administrative Agent or as otherwise required by law.

(c) The Borrower shall indemnify each of the Secured Parties, their respective affiliates and the respective directors, trustees, advisors, officers, agents and employees of the foregoing (each an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all liabilities, losses, damages, costs and expenses of any kind (including reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and reasonable fees and disbursements of counsel) arising out of, or in connection with any and all Environmental Liabilities. Without limiting the generality of the foregoing, each Lien Grantor waives all rights for contribution and all other rights of recovery with respect to liabilities, losses, damages, costs and expenses arising under or related to Environmental Laws that it might have by statute or otherwise against any Indemnitee.

Section 21. *Authority to Administer Collateral.* Each Lien Grantor irrevocably appoints the Administrative Agent its true and lawful attorney, with

full power of substitution, in the name of such Lien Grantor, any Secured Party or otherwise, for the sole use and benefit of the Secured Parties, but at the Borrower's expense, to the extent permitted by law to exercise, at any time and from time to time while an Event of Default shall have occurred and be continuing, all or any of the following powers with respect to all or any of such Lien Grantor's Collateral:

- (a) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof,
- (b) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto,
- (c) to sell, lease, license or otherwise dispose of the same or the proceeds or avails thereof, as fully and effectually as if the Administrative Agent were the absolute owner thereof, and
- (d) to extend the time of payment of any or all thereof and to make any allowance or other adjustment with reference thereto;

*provided* that, except in the case of Personal Property Collateral that is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Administrative Agent will give the relevant Lien Grantor at least ten days' prior written notice of the time and place of any public sale thereof or the time after which any private sale or other intended disposition thereof will be made. Any such notice shall (i) contain the information specified in UCC Section 9-613, (ii) be Authenticated and (iii) be sent to the parties required to be notified pursuant to UCC Section 9-611(c); *provided* that, if the Administrative Agent fails to comply with this sentence in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the UCC.

In furtherance and not in derogation of the Administrative Agent hereunder and under the other Basic Documents, each Lien Grantor does by these presents consent, agree and stipulate that upon the occurrence of an Event of Default it shall be lawful for the Administrative Agent, and each Lien Grantor does hereby authorize the Administrative Agent, to cause all and singular the Collateral to be seized and sold under executory or ordinary process, at the Administrative Agent's sole option, without appraisalment, appraisalment being hereby expressly waived, as an entirety or in parcels as the Administrative Agent may determine, to the highest bidder for cash, and otherwise exercise the rights, powers and remedies afforded herein and under applicable Louisiana law. Any and all declarations of fact made by authentic act before a Notary Public in the presence of two witnesses by a person declaring that such facts lie within his

knowledge shall constitute authentic evidence of such facts for the purpose of executory process. Each Lien Grantor hereby waives in favor of the Administrative Agent: (a) the benefit of appraisal as provided in Louisiana Code of Civil Procedure Articles 2332, 2336, 2723 and 2724, and all other laws conferring the same; (b) the demand and three days delay accorded by Louisiana Code of Civil Procedure Article 2721; (c) the notice of seizure required by Louisiana Code of Civil Procedure Articles 2293 and 2721; (d) the three days delay provided by Louisiana Code of Civil Procedure Articles 2331 and 2722; and (e) the benefit of the other provisions of Louisiana Code of Civil Procedure Articles 2331, 2722, and 2723, not specifically mentioned above. The Administrative Agent is hereby appointed agent and attorney-in-fact for each Lien Grantor and is hereby authorized and empowered to carry out and enforce all of the incorporeal rights in which such Lien Grantor has granted a security interest to the Administrative Agent hereunder. This mandate and power of attorney, being coupled with an interest, is irrevocable so long as the Security Interests granted hereunder remain in effect. In the event the Collateral or any part thereof is seized as an incident to an action for the recognition or enforcement of this Agreement by executory process, ordinary process, sequestration, writ of fieri facias, or/ otherwise, each Lien Grantor and the Administrative Agent agree that the court issuing any such order shall, if petitioned for by the Administrative Agent, direct the applicable sheriff to appoint as a keeper of the Collateral, the Administrative Agent or any agent designated by the Administrative Agent or any person named by the Administrative Agent at the time such seizure is effected. This designation is pursuant to Louisiana Revised Statutes 9:5136-9:5140.2, inclusive, as the same may be amended, and the Administrative Agent shall be entitled to all the rights and benefits afforded thereunder. It is hereby agreed that the keeper shall be entitled to receive as compensation, in excess of its costs and expenses incurred in the administration or preservation of the Collateral, an amount equal to \$1,000 per day, payable on a monthly basis (without duplication of any fees paid under the Mortgage encumbering the real (immovable) property included in the Collateral). The designation of keeper made herein shall not be deemed to require the Administrative Agent to provoke the appointment of such a keeper.

Section 22. *Limitation on Duty in Respect of Collateral.* Beyond the exercise of reasonable care in the custody and preservation thereof, the Administrative Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Administrative Agent will be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if such Collateral is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the

Administrative Agent in good faith, except to the extent that such liability arises from the Administrative Agent's gross negligence or willful misconduct.

Section 23. *General Provisions Concerning the Administrative Agent.*

(a) The provisions of Article 8 of the Credit Agreement shall inure to the benefit of the Administrative Agent, and shall be binding upon all Lien Grantors and all Secured Parties, in connection with this Agreement and the other Security Documents. Without limiting the generality of the foregoing, (i) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (ii) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Security Documents that the Administrative Agent is required in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02 of the Credit Agreement), and (iii) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any CII Carbon Company that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be responsible for the existence, genuineness or value of any Collateral or for the validity, perfection, priority or enforceability of any Transaction Lien, whether impaired by operation of law or by reason of any action or omission to act on its part under the Security Documents. The Administrative Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Secured Party.

(b) *Sub-Agents and Related Parties.* The Administrative Agent may perform any of its duties and exercise any of its rights and powers through one or more sub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any of its duties and exercise any of its rights and powers through its Related Parties. The exculpatory provisions of Section 22 and this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent.

(c) *Information as to Secured Obligations and Actions by Secured Parties.* For all purposes of the Security Documents, including determining the amounts of the Secured Obligations and whether a Secured Obligation is a Contingent Secured Obligation or not, or whether any action has been taken under any Secured Agreement, the Administrative Agent will be entitled to rely on information from (i) its own records for information as to the Lender Parties, their Secured Obligations and actions taken by them, (ii) any Secured Party for

information as to its Secured Obligations and actions taken by it, to the extent that the Administrative Agent has not obtained such information from its own records, and (iii) the Borrower, to the extent that the Administrative Agent has not obtained information from the foregoing sources.

(d) *Refusal to Act.* The Administrative Agent may refuse to act on any notice, consent, direction or instruction from any Secured Parties or any agent, trustee or similar representative thereof that, in the Administrative Agent's opinion, (i) is contrary to law or the provisions of any Security Document, (ii) may expose the Administrative Agent to liability (unless the Administrative Agent shall have been indemnified, to its reasonable satisfaction, for such liability by the Secured Parties that gave such notice, consent, direction or instruction) or (iii) is unduly prejudicial to Secured Parties not joining in such notice, consent, direction or instruction.

(e) *Copies of Certain Notices.* Within two Business Days after it receives or sends any notice referred to in this subsection, the Administrative Agent shall send to the Lenders and each Secured Party Requesting Notice, copies of any certificate designating additional obligations as Secured Obligations received by the Administrative Agent pursuant to Section 26 and any notice given by the Administrative Agent to any Lien Grantor, or received by it from any Lien Grantor, pursuant to Section 18, 19, 21 or 24.

Section 24. *Termination of Transaction Liens; Release of Collateral.* (a) The Transaction Liens granted by each Guarantor shall terminate when its Secured Guarantee is released pursuant to Section 2(c).

(b) The Transaction Liens granted by the Borrower shall terminate when all the Release Conditions are satisfied.

(c) At any time before the Transaction Liens granted by the Borrower terminate, the Administrative Agent may, at the written request of the Borrower, (i) release any Collateral (but not all or substantially all the Collateral) with the prior written consent of the Required Lenders or (ii) release all or substantially all the Collateral with the prior written consent of all Lenders.

(d) If Equity Interests of the Borrower owned by a Parent Guarantor are redeemed in a transaction permitted by the Credit Agreement, the Transaction Liens in such Equity Interests shall terminate. The Administrative Agent shall deliver to the Borrower the Pledged certificates representing such redeemed Equity Interests, in exchange for replacement certificates representing any unredeemed Equity Interests in case of a partial redemption.

(e) Upon any termination of a Transaction Lien or release of Collateral, the Administrative Agent will, at the expense of the relevant Lien Grantor, execute and deliver to such Lien Grantor such documents as such Lien Grantor shall reasonably request to evidence the termination of such Transaction Lien or the release of such Collateral, as the case may be.

Section 25. *Additional and Successor Guarantors and Lien Grantors.* Any Subsidiary may become a party hereto by signing and delivering to the Administrative Agent a Security Agreement Supplement, whereupon such Subsidiary shall become a "Guarantor" and a "Lien Grantor" as defined herein. Any Person that owns any Equity Interest in the Borrower may become a party hereto by signing and delivering to the Administrative Agent a Security Agreement Supplement, whereupon such Person shall become a "Parent Guarantor" and a "Lien Grantor" as defined herein.

Section 26. *Additional Secured Obligations.* The Borrower may from time to time designate its obligations under any Hedging Agreement between the Borrower and a Lender or an Affiliate of a Lender as an additional Secured Obligation for purposes hereof by delivering to the Administrative Agent a certificate signed by a Financial Officer that (a) identifies such Hedging Agreement, specifying the name and address of the other party thereto, the notional principal amount thereof and the expiration date thereof and (b) states that the Borrower's obligations thereunder are designated as Secured Obligations for purposes hereof.

Section 27. *Notices.* Each notice, request or other communication given to any party hereunder shall be given in accordance with Section 9.01 of the Credit Agreement, and in the case of any such notice, request or other communication to a Lien Grantor other than the Borrower, shall be given to it in care of the Borrower.

Section 28. *No Implied Waivers; Remedies Not Exclusive.* No failure by the Administrative Agent or any Secured Party to exercise, and no delay in exercising and no course of dealing with respect to, any right or remedy under any Security Document shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent or any Secured Party of any right or remedy under any Loan Document preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies specified in the Loan Documents are cumulative and are not exclusive of any other rights or remedies provided by law.

Section 29. *Successors and Assigns.* This Agreement is for the benefit of the Administrative Agent and the Secured Parties. If all or any part of any Secured Party's interest in any Secured Obligation is assigned or otherwise

transferred, the transferor's rights hereunder, to the extent applicable to the obligation so transferred, shall be automatically transferred with such obligation. This Agreement shall be binding on the Lien Grantors and their respective successors and assigns.

Section 30. *Amendments and Waivers.* Neither this Agreement nor any provision hereof may be waived, amended, modified or terminated except pursuant to an agreement or agreements in writing entered into by the Administrative Agent, with the consent of such Lenders as are required to consent thereto under Section 9.02 of the Credit Agreement. No such waiver, amendment or modification shall (i) be binding upon any Lien Grantor, except with its written consent, or (ii) affect the rights of a Secured Party (other than a Lender) hereunder more adversely than it affects the comparable rights of the Lenders hereunder, without the consent of such Secured Party.

Section 31. *Governing Law; Jurisdiction.*

(a) This Agreement shall be construed in accordance with and governed by the laws of the State of New York, except as otherwise required by mandatory provisions of law and except to the extent that remedies provided by the laws of any jurisdiction other than the State of New York are governed by the laws of such jurisdiction.

(b) Each Lien Grantor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any relevant appellate court, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each party hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that any Lender Party may otherwise have to bring any action or proceeding relating to any Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Each Lien Grantor irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in subsection (b) of this Section. Each party hereto irrevocably waives, to the fullest extent



permitted by law, the defense of an inconvenient forum to the maintenance of any such suit, action or proceeding in any such court.

Section 32. *Waiver of Jury Trial.* EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY SECURITY DOCUMENT OR ANY TRANSACTION CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 33. *Severability.* If any provision of any Security Document is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions of the Security Documents shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent and the Secured Parties in order to carry out the intentions of the parties thereto as nearly as may be possible and (ii) the invalidity or unenforceability of such provision in such jurisdiction shall not affect the validity or enforceability thereof in any other jurisdiction.

Section 34. *Service of Process.*

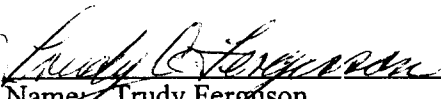
(a) Each Lien Grantor hereby irrevocably designates, appoints, authorizes and empowers as its agent for service of process, CT Corporation System at its offices currently located at 111 Eighth Avenue, New York, New York 10011, to accept and acknowledge for and on behalf of such Lien Grantor service of any process, notices or other documents that may be served in any suit, action or proceeding referred to in Section 31 above.

(b) In lieu of service upon its agent, each party hereto consents to process being served in any suit, action or proceeding of the nature referred to in Section 31 above in the manner provided for notices in Section 27.

(c) Nothing in this Section 34 shall affect the right of any party hereto to serve process in any other manner permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CII CARBON, L.L.C.

By:   
Name: Trudy Ferguson  
Title: President and Chief Executive Officer

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

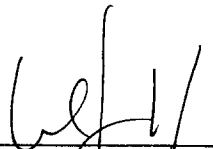
By: \_\_\_\_\_  
Name:  
Title:

STATE OF LOUISIANA )  
 ) ss.:  
PARISH OF ORLEANS )

I, Neal J. Kling, a Notary Public in and for said <sup>Parish</sup> ~~County~~,  
in the State aforesaid, DO HEREBY CERTIFY, that Trudy Ferguson,  
President and Chief Executive Officer of CII CARBON, L.L.C., personally  
known to me to be the same person whose name is subscribed to the foregoing  
instrument as such Officer, appeared before me this day in person and  
acknowledged that (s)he signed, executed and delivered the said instrument as  
her/his own free and voluntary act and as the free and voluntary act of said  
Company, for the uses and purposes therein set forth being duly authorized so to  
do.

GIVEN under my hand and Notarial Seal this 19<sup>th</sup> day of August, 2005.

[Seal]

  
\_\_\_\_\_  
Signature of notary public  
My Commission expires at death

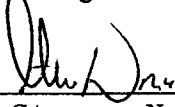
Neal J. Kling  
Notary Public  
Bar No. 22489  
Parish of Orleans, State of Louisiana  
My Commission is for life

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

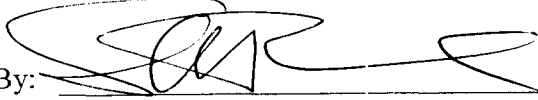
CII CARBON, L.L.C.

By: \_\_\_\_\_  
Name: Trudy Ferguson  
Title: President and Chief Executive Officer

JPMORGAN CHASE BANK, N.A., as  
Administrative Agent

By:  \_\_\_\_\_  
Name: Steven Nance  
Title: Sr. Vice President

JUNIPER INVESTMENT LLC

By: 

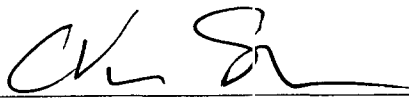
Name: Staffan Encrantz  
Title: President

JUNIPER INVESTORS I LLC

By: 


Name: Dennis Leuer  
Title: Sole Member and Manager

JUNIPER INVESTORS II LLC

By: 

Name: C. Van Sheets  
Title: Sole Member and Manager

BEDFORD FINANCE B.V.

By:   
Name: *A van der Heide*  
Title: *Managing Director*  
*of FTC Trust BV*



**Schedule 1****EQUITY INTERESTS IN THE BORROWER,  
SUBSIDIARIES AND AFFILIATES  
AND INTERCOMPANY NOTES  
OWNED BY ORIGINAL LIEN GRANTORS****EQUITY INTERESTS IN THE BORROWER**

<b>Issuer</b>	<b>Owner</b>	<b>Class</b>	<b>Percent of Class Represented</b>	<b>No. of Shares</b>	<b>Certificate No.</b>
CII Carbon, L.L.C.	Juniper Investment LLC	Series I Common*	97.5%	1,905,888	I-3
CII Carbon, L.L.C.	Juniper Investment LLC	Series I Common	2.5%	48,216	I-1
CII Carbon, L.L.C.	Juniper Investors I LLC	Series II Common*	25%	25,712	II-1
CII Carbon, L.L.C.	Juniper Investors II LLC	Series II Common	75%	77,136	II-2
CII Carbon, L.L.C.	Bedford Finance B.V.	Series III Preferred	100%	125,000	III-1
CII Carbon, L.L.C.	Bedford Finance B.V.	Series IV Preferred	100%	2,854,960	IV-1

\* The Series I Common Shares represents 95% of the common shares of CII Carbon, L.L.C, and the Series II Common Shares represents the remaining 5%.

**OTHER EQUITY INTERESTS IN SUBSIDIARIES AND AFFILIATES  
OWNED BY COMPANY LIEN GRANTORS**

None.

**INTERCOMPANY NOTES**

None.



**Schedule 2**

**INVESTMENT PROPERTY**  
**(other than Equity Interests in the Borrower, Subsidiaries and Affiliates)**  
**OWNED BY ORIGINAL COMPANY LIEN GRANTORS**

None.

**Schedule 3**

**INSTRUMENTS  
(other than Intercompany Notes)  
OWNED BY ORIGINAL COMPANY LIEN GRANTORS**

None.

## COMMERCIAL TORT CLAIMS

The commercial tort claims set forth in the following proceedings, and any other commercial tort claims arising out of the circumstances described below:

1. CII Carbon, L.L.C. vs. Kaiser Aluminum and Chemical Corporation, et al., 23rd Judicial District Court for the Parish of St. James, State of Louisiana, No. 26,837, consolidated with "In Re Gramercy Plant Explosion at Kaiser", 23rd Judicial District Court for the Parish of St. James, State of Louisiana, Master Docket No. 25,975.

This proceeding was filed by the Borrower on June 30, 2000, seeking damages against Kaiser Aluminum & Chemical Corporation, MEI Corporation, MEI Contractors, Inc., Excel Analytical Services, Inc., Merit Electrical & Instrumentation, Inc., Excel Group, Inc., Power & Control Systems, Inc., Power & Control Systems, International, Inc., Turner Industries, Ltd., Schweitzer Engineering Laboratories, Inc., Thomas & Betts Corporation, Walter Hansley, Harmony Corporation, Manpower International, Inc., and Manpower, Inc., as a result of an explosion at the Kaiser plant located adjacent to the Borrower's plant in Gramercy, Louisiana, on July 5, 1999. The Borrower asserts that Kaiser and/or the other defendants are liable to it for damages from property damage, increased materials processing and transportation costs, and lost profits from the exchange of co-generated steam or electric energy in the Gramercy Powerhouse, all resulting from the explosion at the Kaiser facility.

2. In Re Kaiser Aluminum Corporation, et al., United States Bankruptcy Court for the District of Delaware, Case No. 02-10429.

This Chapter 11 bankruptcy proceeding was filed by Kaiser Aluminum Corporation and a number of its subsidiaries (including Kaiser Aluminum & Chemical Corporation) on February 12, 2002. On January 30, 2003, the Borrower filed a proof-of-claim asserting prepetition claims against Kaiser in the amount of \$16,490,939, of which \$370,913 is an uncontested amount due and unpaid to the Company pursuant to its interim agreement with Kaiser for steam delivered to the Gramercy Powerhouse between January 1, 2002 and February 12, 2002, and the remainder of which represents a disputed claim for losses claimed on the same basis as the state-court suit described in item 1 above, for the period from July 5, 1999, through February 12, 2002.

**Schedule 5-A**  
**Leased Rolling Stock**

Leased RR Cars from Helm Financial				Subleased RR Cars from Consolidated Grain & Barge				Switch Locomotive Lease from Louisiana & Delta Railroad *				Switch Locomotive Lease from Indiana Railroad at Robinson Plant				
<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>							<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	
HLMX	3007	HT	H351	ITLX	42048	LO	C113	NO.	1200							
HLMX	3013	HT	H351	ITLX	40940	LO	C113									
HLMX	3015	HT	H351	ITLX	40960	LO	C113									
HLMX	3020	HT	H351	ITLX	42060	LO	C113	* Acquired in Acquisition								
HLMX	3021	HT	H351	ITLX	20014	LO	C113									
HLMX	3035	HT	H351	ITLX	20030	LO	C113									
HLMX	3057	HT	H351	ITLX	40912	LO	C113									
HLMX	3066	HT	H351	ITLX	40963	LO	C113									
HLMX	9124	HT	H351	ITLX	40965	LO	C113									
HLMX	9135	HT	H351	ITLX	40969	LO	C113									
HLMX	9141	HT	H351	ITLX	42075	LO	C113									
HLMX	9144	HT	H351	ITLX	42081	LO	C113									
HLMX	9146	HT	H351	ITLX	42106	LO	C113									
HLMX	9189	HT	H351	ITLX	42113	LO	C113									
HLMX	9204	HT	H351	ITLX	42142	LO	C113									
HLMX	9206	HT	H351	ITLX	42024	LO	C113									
HLMX	9250	HT	H351	ITLX	40938	LO	C113									
HLMX	9260	HT	H351	NAHX	488770	LO	C113									
HLMX	9262	HT	H351	NAHX	53262	LO	C113									
HLMX	9283	HT	H351	NAHX	53307	LO	C113									
HLMX	9314	HT	H351	NAHX	53341	LO	C113									
HLMX	9325	HT	H351	NAHX	484475	LO	C113									
HLMX	9358	HT	H351	NAHX	486465	LO	C113									
HLMX	9410	HT	H351	NAHX	53008	LO	C113									
HLMX	42003	HT	H351	NAHX	53090	LO	C113									
HLMX	42024	HT	H351	NAHX	53134	LO	C113									
HLMX	42042	HT	H351	NAHX	53200	LO	C113									
HLMX	42044	HT	H351	PLCX	13788	LO	C113									
HLMX	42049	HT	H351	PLCX	16132	LO	C113									
HLMX	42051	HT	H351	PLCX	19758	LO	C113									
HLMX	42061	HT	H351	PLCX	21421	LO	C113									
HLMX	42093	HT	H351	PLCX	28396	LO	C113									
HLMX	42095	HT	H351	PLCX	28426	LO	C113									
HLMX	42096	HT	H351	PLCX	13749	LO	C113									
HLMX	42097	HT	H351	PTLX	14892	LO	C113									
HLMX	42098	HT	H351	PTLX	15275	LO	C113									
HLMX	62745	HT	H350	PTLX	15374	LO	C113									
HLMX	84223	HT	H350	PTLX	15609	LO	C113									
HLMX	84224	HT	H350	PTLX	15794	LO	C113									
HLMX	84225	HT	H350	PTLX	15864	LO	C113									
HLMX	84226	HT	H350	PTLX	15906	LO	C113									
HLMX	84229	HT	H350	PTLX	15979	LO	C113									
HLMX	84233	HT	H350	PTLX	14349	LO	C113									
HLMX	84234	HT	H350	PTLX	33756	LO	C113									

Two Leased RR Cars  
from GE Equipment  
Services

ACFX

ACFX

27344

46483

LO

LO

C113

C113

Two Leased RR Cars from GE Equipment Services		
ACFX	27344	LO
ACFX	46483	C113

**Schedule 5-A**  
**Leased Rolling Stock**

Leased RR Cars from Helm Financial				Subleased RR Cars from Consolidated Grain & Barge				Switch Locomotive Lease from Louisiana & Delta Railroad *				Switch Locomotive Lease from Indiana Railroad at Robinson Plant			
<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>					<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>		
HLMX	84235	HT	H350	PTLX	14030	LO	C113								
HLMX	84236	HT	H350	PTLX	14173	LO	C113								
HLMX	84238	HT	H350	PTLX	14364	LO	C113								
HLMX	84241	HT	H350	PTLX	15035	LO	C113								
HLMX	84244	HT	H350	PTLX	15025	LO	C113								
HLMX	84259	HT	H350	TLCX	30335	LO	C113								
HLMX	84263	HT	H350	USLX	20445	LO	C113								
HLMX	84269	HT	H350	USLX	20480	LO	C113								
HLMX	84271	HT	H350	USLX	20903	LO	C113								
HLMX	84279	HT	H350												
HLMX	84281	HT	H350												
HLMX	84283	HT	H350												
HLMX	84285	HT	H350												
HLMX	84286	HT	H350												
HLMX	84289	HT	H350												
HLMX	84290	HT	H350												
HLMX	84293	HT	H350												
HLMX	84295	HT	H350												
HLMX	84296	HT	H350												
HLMX	84297	HT	H350												
HLMX	84307	HT	H350												
HLMX	84312	HT	H350												
HLMX	84316	HT	H350												
HLMX	84317	HT	H350												
HLMX	84322	HT	H350												
HLMX	84323	HT	H350												
HLMX	84325	HT	H350												
HLMX	84328	HT	H350												
HLMX	84332	HT	H350												
HLMX	84333	HT	H350												
HLMX	84335	HT	H350												
HLMX	84336	HT	H350												
HLMX	84337	HT	H350												
HLMX	84340	HT	H350												
HLMX	84343	HT	H350												
HLMX	84344	HT	H350												
HLMX	84346	HT	H350												
HLMX	84348	HT	H350												
HLMX	84353	HT	H350												
HLMX	84358	HT	H350												
HLMX	84361	HT	H350												
HLMX	84362	HT	H350												
HLMX	84363	HT	H350												
HLMX	84364	HT	H350												

**Schedule 5-A**  
**Leased Rolling Stock**

<b>Leased RR Cars from Helm Financial</b>	<b>Subleased RR Cars from Consolidated Grain &amp; Barge</b>	<b>Switch Locomotive Lease from Louisiana &amp; Delta Railroad *</b>	<b>Switch Locomotive Lease from Indiana Railroad at Robinson Plant</b>
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<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>
HMLX	10400	HT	H351						
HMLX	10401	HT	H351						
HMLX	10402	HT	H351						
HMLX	10403	HT	H351						
HMLX	10404	HT	H351						
HMLX	10405	HT	H351						
HMLX	10406	HT	H351						
HMLX	10407	HT	H351						
HMLX	10408	HT	H351						
HMLX	10409	HT	H351						
HMLX	10410	HT	H351						
HMLX	10411	HT	H351						
HMLX	10412	HT	H351						
HMLX	10413	HT	H351						
HMLX	10414	HT	H351						
HMLX	10415	HT	H351						
HMLX	10416	HT	H351						
HMLX	10417	HT	H351						
HMLX	10418	HT	H351						
HMLX	10419	HT	H351						
HMLX	10420	HT	H351						
HMLX	10421	HT	H351						
HMLX	10422	HT	H351						
HMLX	10423	HT	H351						
HMLX	10424	HT	H351						
HMLX	10425	HT	H351						
HMLX	10426	HT	H351						
HMLX	10427	HT	H351						
HMLX	10428	HT	H351						
HMLX	10429	HT	H351						
HMLX	10430	HT	H351						
HMLX	10431	HT	H351						
HMLX	10432	HT	H351						
HMLX	10433	HT	H351						
HMLX	10434	HT	H351						
HMLX	10435	HT	H351						
HMLX	10436	HT	H351						
HMLX	10437	HT	H351						
HMLX	10438	HT	H351						
HMLX	10439	HT	H351						
HMLX	10440	HT	H351						
HMLX	10441	HT	H351						
HMLX	10442	HT	H351						
HMLX	10443	HT	H351						

**Schedule 5-A**  
**Leased Rolling Stock**

Leased RR Cars from Heim Financial				Subleased RR Cars from Consolidated Grain & Barge		Switch Locomotive Lease from Louisiana & Delta Railroad *		Switch Locomotive Lease from Indiana Railroad at Robinson Plant	
<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>
HIMJX	10444	HT	H351						
HIMJX	10445	HT	H351						
HIMJX	10446	HT	H351						
HIMJX	10447	HT	H351						
HIMJX	10448	HT	H351						
HIMJX	10449	HT	H351						
HIMJX	10450	HT	H351						
HIMJX	10451	HT	H351						
HIMJX	10452	HT	H351						
HIMJX	10453	HT	H351						
HIMJX	10454	HT	H351						
HIMJX	10455	HT	H351						
HIMJX	10456	HT	H351						
HIMJX	10457	HT	H351						
HIMJX	10458	HT	H351						
HIMJX	10459	HT	H351						
HIMJX	10460	HT	H351						
HIMJX	10461	HT	H351						
HIMJX	10462	HT	H351						
HIMJX	10463	HT	H351						
HIMJX	10464	HT	H351						
HIMJX	10465	HT	H351						
HIMJX	10466	HT	H351						
HIMJX	10467	HT	H351						
HIMJX	10468	HT	H351						
HIMJX	10469	HT	H351						
HIMJX	10470	HT	H351						
HIMJX	10471	HT	H351						
HIMJX	10472	HT	H351						
HIMJX	10473	HT	H351						
HIMJX	10474	HT	H351						
HIMJX	10475	HT	H351						
HIMJX	10476	HT	H351						
HIMJX	10477	HT	H351						
HIMJX	10478	HT	H351						
HIMJX	10479	HT	H351						
HIMJX	10480	HT	H351						
HIMJX	10481	HT	H351						
HIMJX	10482	HT	H351						
HIMJX	10483	HT	H351						
HIMJX	10484	HT	H351						
HIMJX	10485	HT	H351						
HIMJX	10486	HT	H351						
HIMJX	10487	HT	H351						

**Schedule 5-A**  
**Leased Rolling Stock**

Leased RR Cars from Helm Financial				Subleased RR Cars from Consolidated Grain & Barge		Switch Locomotive Lease from Louisiana & Delta Railroad *		Switch Locomotive Lease from Indiana Railroad at Robinson Plant	
<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>
HMLX	10488	HT	H351						
HMLX	10489	HT	H351						
HMLX	10490	HT	H351						
HMLX	10491	HT	H351						
HMLX	10492	HT	H351						
HMLX	10493	HT	H351						
HMLX	10494	HT	H351						
HMLX	10495	HT	H351						
HMLX	10496	HT	H351						
HMLX	10497	HT	H351						
HMLX	10498	HT	H351						
HMLX	10500	HT	H351						
HMLX	10501	HT	H351						
HMLX	10502	HT	H351						
HMLX	10503	HT	H351						
HMLX	10504	HT	H351						
HMLX	10505	HT	H351						
HMLX	10506	HT	H351						
HMLX	10507	HT	H351						
HMLX	10508	HT	H351						
HMLX	10509	HT	H351						
HMLX	10510	HT	H351						
HMLX	10512	HT	H351						
HMLX	10513	HT	H351						
HMLX	10514	HT	H351						
HMLX	10515	HT	H351						
HMLX	10516	HT	H351						
HMLX	10517	HT	H351						
HMLX	10519	HT	H351						



**Schedule 5-B**  
**Owned Rolling Stock**

**CII Carbon Owned  
Railroad Cars**

<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>
CCCX	36500	HT	H350
CCCX	36501	HT	H350
CCCX	36505	HT	H350
CCCX	36506	HT	H350
CCCX	36513	HT	H350
CCCX	36516	HT	H350
CCCX	36518	HT	H350
CCCX	36523	HT	H350
CCCX	36529	HT	H350
CCCX	36530	HT	H350
CCCX	36537	HT	H350
CCCX	36538	HT	H350
CCCX	36539	HT	H350
CCCX	36544	HT	H350
CCCX	36547	HT	H350
CCCX	36548	HT	H350
CCCX	36549	HT	H350
CCCX	36550	HT	H350
CCCX	36555	HT	H350
CCCX	36557	HT	H350
CCCX	36570	HT	H350
CCCX	36584	HT	H350
CCCX	36589	HT	H350
CCCX	36596	HT	H350
CCCX	36613	HT	H350
CCCX	36617	HT	H350
CCCX	36624	HT	H350
CCCX	36628	HT	H350
CCCX	36631	HT	H350
CCCX	36636	HT	H350
CCCX	36639	HT	H350
CCCX	36645	HT	H350
CCCX	36646	HT	H350
CCCX	36655	HT	H350
CCCX	36657	HT	H350
CCCX	36659	HT	H350
CCCX	36660	HT	H350
CCCX	36689	HT	H350

**Schedule 5-B**  
**Owned Rolling Stock**

**CII Carbon Owned  
Railroad Cars**

<u>Car</u>	<u>Number</u>	<u>Mechanical Designation</u>	<u>AAR Car Type Code</u>
CCCX	36691	HT	H350
CCCX	36693	HT	H350
CCCX	36694	HT	H350
CCCX	36697	HT	H350
CCCX	36699	HT	H350
CCCX	36702	HT	H350
CCCX	36704	HT	H350
CCCX	36710	HT	H350
CCCX	36715	HT	H350
CCCX	36728	HT	H350
CCCX	36736	HT	H350
CCCX	36761	HT	H350
CCCX	36766	HT	H350
CCCX	36774	HT	H350
CCCX	36786	HT	H350
CCCX	36789	HT	H350
CCCX	36792	HT	H350
CCCX	36799	HT	H350
CCCX	36812	HT	H350
CCCX	36813	HT	H350
CCCX	36818	HT	H350
CCCX	36821	HT	H350
CCCX	36822	HT	H350
CCCX	36828	HT	H350
CCCX	36829	HT	H350
CCCX	36838	HT	H350
CCCX	36863	HT	H350
CCCX	36868	HT	H350
CCCX	36871	HT	H350
CCCX	36876	HT	H350
CCCX	36877	HT	H350
CCCX	36888	HT	H350
CCCX	36890	HT	H350
CCCX	36748	HT	H350
CCCX	36867	HT	H350

Schedule 5-B  
Owned Rolling Stock

CII Carbon Owned

Railroad Cars

<u>Car</u>	<u>Number</u>	<u>Mechanical</u>	<u>AAR Car</u>
		<u>Designation</u>	<u>Type Code</u>

Schedule 5-B  
Owned Rolling Stock

CII Carbon Owned

Railroad Cars

<u>Car</u>	<u>Number</u>	<u>Mechanical</u>	<u>AAR Car</u>
		<u>Designation</u>	<u>Type Code</u>

**PARENT GUARANTOR PERFECTION INFORMATION****Part 1 – Exact Corporate Name,  
Jurisdiction of Organization and Filing Office**

<b><u>Parent Guarantor</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Filing Office</u></b>
Bedford Finance B.V.	Netherlands	Recorder of Deeds, Washington DC
Juniper Investment LLC	Nevada	Nevada Secretary of State
Juniper Investors I LLC	Nevada	Nevada Secretary of State
Juniper Investors II LLC	Nevada	Nevada Secretary of State

**Part 2 – Description of Collateral**

This financing statement covers all of the Debtor's interest in all equity interests in CII Carbon, L.L.C., whether investment property or general intangibles, and all debt obligations of CII Carbon, L.L.C. owed to the Debtor, whether instruments or general intangibles, and all proceeds of any of the foregoing, in each case whether now owned or hereafter arising or acquired.



**EXHIBIT A**  
**to Security Agreement**

**SECURITY AGREEMENT SUPPLEMENT**

SECURITY AGREEMENT SUPPLEMENT dated as of \_\_\_\_\_, \_\_\_\_\_,  
between [NAME OF LIEN GRANTOR] (the "**Lien Grantor**") and JPMORGAN  
CHASE BANK, N.A., as Administrative Agent.

WHEREAS, CII Carbon, L.L.C. (the "**Borrower**"), the Guarantors party  
thereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent, are  
parties to a Guarantee and Security Agreement dated as of August \_\_, 2005 (as  
heretofore amended and/or supplemented, the "**Security Agreement**") under  
which the Borrower secures certain of its obligations (the "**Secured  
Obligations**") and the Guarantors guarantee the Secured Obligations and secure  
their respective guarantees thereof;

WHEREAS, [name of Lien Grantor] desires to become [is] a party to the  
Security Agreement as a Guarantor and Lien Grantor thereunder;<sup>1</sup> and

WHEREAS, terms defined in the Security Agreement (or whose  
definitions are incorporated by reference in Section 1 of the Security Agreement)  
and not otherwise defined herein have, as used herein, the respective meanings  
provided for therein;

NOW, THEREFORE, in consideration of the foregoing and other good  
and valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged, the parties hereto agree as follows:

1. *Secured Guarantee.*<sup>2</sup> The Lien Grantor unconditionally guarantees  
the full and punctual payment of each Secured Obligation when due (whether at  
stated maturity, upon acceleration or otherwise). The Lien Grantor acknowledges  
that, by signing this Security Agreement Supplement and delivering it to the  
Administrative Agent, the Lien Grantor becomes a "Guarantor" and "Lien  
Grantor" for all purposes of the Security Agreement and that its obligations under  
the foregoing Secured Guarantee are subject to all the provisions of the Security

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<sup>1</sup> If the Lien Grantor is the Borrower, delete this recital and Section 1 hereof.

<sup>2</sup> Delete this Section if the Lien Grantor is the Borrower or a Guarantor that is already a  
party to the Security Agreement.

Agreement (including those set forth in Section 2 thereof) applicable to the obligations of a Guarantor thereunder.

2. *Grant of Transaction Liens.* (a) In order to secure [its Secured Guarantee]<sup>3</sup> [the Secured Obligations]<sup>4</sup>, the Lien Grantor grants to the Administrative Agent for the benefit of the Secured Parties a continuing security interest in all the following property of the Lien Grantor, whether now owned or existing or hereafter acquired or arising and regardless of where located (the **"New Collateral"**):

[describe property being added to the Collateral]<sup>5</sup>

(b) With respect to each right to payment or performance included in the Collateral from time to time, the Transaction Lien granted therein includes a continuing security interest in (i) any Supporting Obligation that supports such payment or performance and (ii) any Lien that (x) secures such right to payment or performance or (y) secures any such Supporting Obligation.

(c) The foregoing Transaction Liens are granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or transfer or in any way affect or modify, any obligation or liability of the Lien Grantor with respect to any of the New Collateral or any transaction in connection therewith.

3. *Delivery of Collateral.* Concurrently with delivering this Security Agreement Supplement to the Administrative Agent, the Lien Grantor is complying with the provisions of Section 10 of the Security Agreement with respect to Investment Property, in each case if and to the extent included in the New Collateral at such time.

4. *Party to Security Agreement.* Upon delivering this Security Agreement Supplement to the Administrative Agent, the Lien Grantor will become a party to the Security Agreement and will thereafter have all the rights

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<sup>3</sup> Delete bracketed words if the Lien Grantor is the Borrower.

<sup>4</sup> Delete bracketed words if the Lien Grantor is a Guarantor.

<sup>5</sup> If the Lien Grantor is not already a party to the Security Agreement, clauses (i) through (xv) of, and the proviso to, Section 3(a) or Section 3(b) of the Security Agreement may be appropriate.



and obligations of a Guarantor and a Lien Grantor thereunder and be bound by all the provisions thereof as fully as if the Lien Grantor were one of the original parties thereto.<sup>6</sup>

5. *Representations and Warranties.* (a) The Lien Grantor is duly organized, validly existing and in good standing under the laws of [jurisdiction of organization].

(b) The Lien Grantor has delivered a Perfection Certificate (if the Lien Grantor is a Company Lien Grantor) or the information required to be described in Schedule 6 (if the Lien Grantor is a Parent Guarantor) to the Administrative Agent. The information set forth therein is correct and complete as of the date hereof. Within 60 days after the date hereof, the Lien Grantor will furnish to the Administrative Agent a file search report from each UCC filing office listed in such Perfection Certificate or Schedule 6, as applicable, showing the filing made at such filing office to perfect the Transaction Liens on the New Collateral.

(c) The execution and delivery of this Security Agreement Supplement by the Lien Grantor and the performance by it of its obligations under the Security Agreement as supplemented hereby are within its corporate or other powers, have been duly authorized by all necessary corporate or other action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of its Organizational Documents, or of any agreement, judgment, injunction, order, decree or other instrument binding upon it or result in the creation or imposition of any Lien (except a Transaction Lien) on any of its assets.

(d) The Security Agreement as supplemented hereby constitutes a valid and binding agreement of the Lien Grantor, enforceable in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, fraudulent conveyance or other similar laws affecting creditors' rights generally and (ii) general principles of equity.

(e) Each of the representations and warranties set forth in Sections 4 through 15 of the Security Agreement is true as applied to the Lien Grantor and the New Collateral. For purposes of the foregoing

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<sup>6</sup> Delete Section 4 if the Lien Grantor is already a party to the Security Agreement.

sentence, references in said Sections to a "Lien Grantor" and ["Company Lien Grantor"] ["Parent Guarantor"] shall be deemed to refer to the Lien Grantor, references to Schedules to the Security Agreement shall be deemed to refer to the corresponding Schedules to this Security Agreement Supplement, references to "Collateral" shall be deemed to refer to the New Collateral, and references to the "Effective Date" shall be deemed to refer to the date on which the Lien Grantor signs and delivers this Security Agreement Supplement.

6. *[Compliance with Foreign Law.* The Lien Grantor represents that it has taken, and agrees that it will continue to take, all actions required under the laws (including the conflict of laws rules) of its jurisdiction of organization to ensure that the Transaction Liens on the New Collateral rank prior to all Liens and rights of others therein.<sup>7</sup>]

7. *Governing Law.* This Security Agreement Supplement shall be construed in accordance with and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement Supplement to be duly executed by their respective authorized officers as of the day and year first above written.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A. , as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

<sup>7</sup> Include Section 6 if the Lien Grantor is organized under the laws of a jurisdiction outside the United States.

**Schedule 1  
to Security Agreement  
Supplement**

**EQUITY INTERESTS IN THE BORROWER,  
SUBSIDIARIES AND AFFILIATES  
OWNED BY LIEN GRANTOR**

**EQUITY INTERESTS IN THE BORROWER**

<u>Issuer</u>	<u>Jurisdiction of Organization</u>	<u>Percentage Owned</u>	<u>Number of Shares or Units</u>
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**OTHER EQUITY INTERESTS**

<u>Issuer</u>	<u>Jurisdiction of Organization</u>	<u>Percentage Owned</u>	<u>Number of Shares or Units</u>
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**Schedule 2  
to Security Agreement  
Supplement**

**INTERCOMPANY NOTES**

<b>Issuer</b>	<b>Pledgor</b>	<b>Description of Debt</b>
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**Schedule 3**  
**to Security Agreement**  
**Supplement<sup>1</sup>**

**INVESTMENT PROPERTY**  
**(other than Equity Interests in Subsidiaries and Affiliates)**  
**OWNED BY LIEN GRANTOR**

**PART 1 — Securities**

<b>Issuer</b>	<b>Jurisdiction of Organization</b>	<b>Amount Owned</b>	<b>Type of Security</b>
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**PART 2 — Securities Accounts**

The Lien Grantor owns Security Entitlements with respect to Financial Assets credited to the following Securities Accounts:

<b>Securities Intermediary</b>	<b>Account Number</b>
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<sup>1</sup> This Schedule is only applicable if the Lien Grantor is a "Company Lien Grantor" under the Security Agreement.



**Schedule 4  
to Security Agreement  
Supplement<sup>1</sup>**

**COMMERCIAL TORT CLAIMS**

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<sup>1</sup> This Schedule is only applicable if the Lien Grantor is a "Company Lien Grantor" under the Security Agreement.

**Schedule 5  
to Security Agreement  
Supplement<sup>1</sup>**

**ROLLING STOCK**

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<sup>1</sup> This Schedule is only applicable if the Lien Grantor is a "Company Lien Grantor" under the Security Agreement.



**EXHIBIT B**  
**to Security Agreement**

**COPYRIGHT SECURITY AGREEMENT**

**(Copyrights, Copyright Registrations, Copyright  
Applications and Copyright Licenses)**

WHEREAS, [name of Lien Grantor], a \_\_\_\_\_ corporation<sup>1</sup>  
(herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a  
party to, the Copyright Collateral (as defined below);

WHEREAS, CII Carbon, L.L.C. (the "**Borrower**"), the Lenders party  
thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent, LC Issuing  
Bank and Swingline Lender, are parties to a Credit Agreement dated as of August  
\_\_, 2005 (as amended from time to time, the "**Credit Agreement**"); and

WHEREAS, pursuant to (i) a Guarantee and Security Agreement dated as  
of August \_\_, 2005 (as amended and/or supplemented from time to time, the  
"**Security Agreement**") among the Borrower, the Guarantors party thereto and  
JPMorgan Chase Bank, N.A., as Administrative Agent for the Secured Parties  
referred to therein (in such capacity, together with its successors in such capacity,  
the "**Grantee**"), and (ii) certain other Security Documents (including this  
Copyright Security Agreement), the Lien Grantor has [secured certain of its  
obligations (the "**Secured Obligations**")]<sup>2</sup> [guaranteed certain obligations of the  
Borrower and secured such guarantee (the "**Lien Grantor's Secured  
Guarantee**")]<sup>3</sup> by granting to the Grantee for the benefit of such Secured Parties a  
continuing security interest in personal property of the Lien Grantor, including all  
right, title and interest of the Lien Grantor in, to and under the Copyright  
Collateral (as defined below);

NOW, THEREFORE, for good and valuable consideration, the receipt and  
sufficiency of which are hereby acknowledged, the Lien Grantor grants to the  
Grantee, to secure the [Secured Obligations] [Lien Grantor's Secured Guarantee],  
a continuing security interest in all of the Lien Grantor's right, title and interest in,

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<sup>1</sup> Modify as needed if the Lien Grantor is not a corporation.

<sup>2</sup> Delete these bracketed words if the Lien Grantor is a Guarantor.

<sup>3</sup> Delete these bracketed words if the Lien Grantor is the Borrower.

to and under the following (all of the following items or types of property being herein collectively referred to as the "**Copyright Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Copyright (as defined in the Security Agreement) owned by the Lien Grantor, including, without limitation, each Copyright registration or application therefor referred to in Schedule 1 hereto;

(ii) each Copyright License (as defined in the Security Agreement) to which the Lien Grantor is a party, including, without limitation, each Copyright License identified in Schedule 1 hereto; and

(iii) all proceeds of, revenues from, and accounts and general intangibles arising out of, the foregoing, including, without limitation, all proceeds of and revenues from any claim by the Lien Grantor against third parties for past, present or future infringement of any Copyright (including, without limitation, any Copyright owned by the Lien Grantor and identified in Schedule 1), and all rights and benefits of the Lien Grantor under any Copyright License (including, without limitation, any Copyright License identified in Schedule 1).

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee's name, from time to time, in the Grantee's discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Copyright Collateral any and all appropriate action which the Lien Grantor might take with respect to the Copyright Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Copyright Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Copyright Collateral.

The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, the Lien Grantor has caused this Copyright  
Security Agreement to be duly executed by its officer thereunto duly authorized  
as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, \_\_\_\_\_ of [NAME OF LIEN GRANTOR] (the "**Company**"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that (s)he signed, executed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth being duly authorized so to do.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Signature of notary public  
My Commission expires \_\_\_\_\_

**Schedule 1  
to Copyright  
Security Agreement**

[NAME OF LIEN GRANTOR]

**COPYRIGHT REGISTRATIONS**

<u>Registration No.</u>	<u>Registration Date</u>	<u>Title</u>	<u>Expiration Date</u>
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**COPYRIGHT APPLICATIONS**

<u>Case No.</u>	<u>Serial No.</u>	<u>Country</u>	<u>Date</u>	<u>Filing Title</u>
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**COPYRIGHT LICENSES**

<u>Name of Agreement</u>	<u>Parties Licensor/Licensee</u>	<u>Date of Agreement</u>	<u>Subject Matter</u>
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**EXHIBIT C**  
**to Security Agreement**

**PATENT SECURITY AGREEMENT**

**(Patents, Patent Applications and Patent Licenses)**

WHEREAS, [name of Lien Grantor], a \_\_\_\_\_ corporation<sup>1</sup> (herein referred to as the "**Lien Grantor**") owns, or in the case of licenses is a party to, the Patent Collateral (as defined below);

WHEREAS, CII Carbon, L.L.C. (the "**Borrower**"), the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent, LC Issuing Bank and Swingline Lender, are parties to a Credit Agreement dated as of August 23, 2005 (as amended from time to time, the "**Credit Agreement**"); and

WHEREAS, pursuant to (i) a Guarantee and Security Agreement dated as of August 23, 2005 (as amended and/or supplemented from time to time, the "**Security Agreement**") among the Borrower, the Guarantors party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Secured Parties referred to therein (in such capacity, together with its successors in such capacity, the "**Grantee**"), and (ii) certain other Security Documents (including this Patent Security Agreement), the Lien Grantor has secured certain of its obligations (the "**Secured Obligations**")<sup>2</sup> [guaranteed certain obligations of the Borrower and secured such guarantee (the "**Lien Grantor's Secured Guarantee**")]<sup>3</sup> by granting to the Grantee for the benefit of such Secured Parties a continuing security interest in personal property of the Lien Grantor, including all right, title and interest of the Lien Grantor in, to and under the Patent Collateral (as defined below);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lien Grantor grants to the Grantee, to secure the [Secured Obligations] [Lien Grantor's Secured Guarantee], a continuing security interest in all of the Lien Grantor's right, title and interest in, to and under the following (all of the following items or types of property being

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<sup>1</sup> Modify as needed if the Lien Grantor is not a corporation.

<sup>2</sup> Delete these bracketed words if the Lien Grantor is a Guarantor.

<sup>3</sup> Delete these bracketed words if the Lien Grantor is the Borrower.

herein collectively referred to as the "**Patent Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Patent (as defined in the Security Agreement) owned by the Lien Grantor, including, without limitation, each Patent referred to in Schedule 1 hereto;

(ii) each Patent License (as defined in the Security Agreement) to which the Lien Grantor is a party, including, without limitation, each Patent License identified in Schedule 1 hereto; and

(iii) all proceeds of and revenues from the foregoing, including, without limitation, all proceeds of and revenues from any claim by the Lien Grantor against third parties for past, present or future infringement of any Patent owned by the Lien Grantor (including, without limitation, any Patent identified in Schedule 1 hereto) and all rights and benefits of the Lien Grantor under any Patent License (including, without limitation, any Patent License identified in Schedule 1 hereto).

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee's name, from time to time, in the Grantee's discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Patent Collateral any and all appropriate action which the Lien Grantor might take with respect to the Patent Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Patent Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Patent Collateral.

The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Patent Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, the Lien Grantor has caused this Patent Security Agreement to be duly executed by its officer thereunto duly authorized as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, \_\_\_\_\_ of [NAME OF LIEN GRANTOR] (the "**Company**"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that (s)he signed, executed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth being duly authorized so to do.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[Seal]

\_\_\_\_\_  
Signature of notary public  
My Commission expires \_\_\_\_\_

**Schedule 1  
to Patent  
Security Agreement**

**[NAME OF LIEN GRANTOR]**

**PATENTS AND DESIGN PATENTS**

<u><b>Patent No.</b></u>	<u><b>Issued</b></u>	<u><b>Expiration</b></u>	<u><b>Country</b></u>	<u><b>Title</b></u>
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**PATENT APPLICATIONS**

<u><b>Case No.</b></u>	<u><b>Serial No.</b></u>	<u><b>Country</b></u>	<u><b>Date</b></u>	<u><b>Filing Title</b></u>
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**PATENT LICENSES**

<u><b>Name of Agreement</b></u>	<u><b>Parties Licensor/Licensee</b></u>	<u><b>Date of Agreement</b></u>	<u><b>Subject Matter</b></u>
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**EXHIBIT D**  
**to Security Agreement**

**TRADEMARK SECURITY AGREEMENT**

**(Trademarks, Trademark Registrations, Trademark  
Applications and Trademark Licenses)**

WHEREAS, [name of Lien Grantor], a \_\_\_\_\_ corporation<sup>1</sup>  
(herein referred to as the “**Lien Grantor**”) owns, or in the case of licenses is a  
party to, the Trademark Collateral (as defined below);

WHEREAS, CII Carbon, L.L.C. (the “**Borrower**”), the Lenders party  
thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent, LC Issuing  
Bank and Swingline Lender, are parties to a Credit Agreement dated as of August  
23, 2005 (as amended from time to time, the “**Credit Agreement**”); and

WHEREAS, pursuant to (i) a Guarantee and Security Agreement dated as  
of August 23, 2005 (as amended and/or supplemented from time to time, the  
“**Security Agreement**”) among the Borrower, the Guarantors party thereto and  
JPMorgan Chase Bank, N.A., as Administrative Agent for the Secured Parties  
referred to therein (in such capacity, together with its successors in such capacity,  
the “**Grantee**”), and (ii) certain other Security Documents (including this  
Trademark Security Agreement), the Lien Grantor has [secured certain of its  
obligations (the “**Secured Obligations**”)]<sup>2</sup> [guaranteed certain obligations of the  
Borrower and secured such guarantee (the “**Lien Grantor’s Secured  
Guarantee**”)]<sup>3</sup> by granting to the Grantee for the benefit of such Secured Parties a  
continuing security interest in personal property of the Lien Grantor, including all  
right, title and interest of the Lien Grantor in, to and under the Trademark  
Collateral (as defined below);

NOW, THEREFORE, for good and valuable consideration, the receipt and  
sufficiency of which are hereby acknowledged, the Lien Grantor grants to the  
Grantee, to secure the [Secured Obligations] [Lien Grantor’s Secured Guarantee],  
a continuing security interest in all of the Lien Grantor’s right, title and interest in,

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<sup>1</sup> Modify as needed if the Lien Grantor is not a corporation.

<sup>2</sup> Delete these bracketed words if the Lien Grantor is a Guarantor.

<sup>3</sup> Delete these bracketed words if the Lien Grantor is the Borrower.

to and under the following (all of the following items or types of property being herein collectively referred to as the "**Trademark Collateral**"), whether now owned or existing or hereafter acquired or arising:

(i) each Trademark (as defined in the Security Agreement) owned by the Lien Grantor, including, without limitation, each Trademark registration and application referred to in Schedule 1 hereto, and all of the goodwill of the business connected with the use of, or symbolized by, each Trademark;

(ii) each Trademark License (as defined in the Security Agreement) to which the Lien Grantor is a party, including, without limitation, each Trademark License identified in Schedule 1 hereto, and all of the goodwill of the business connected with the use of, or symbolized by, each Trademark licensed pursuant thereto; and

(iii) all proceeds of and revenues from the foregoing, including, without limitation, all proceeds of and revenues from any claim by the Lien Grantor against third parties for past, present or future unfair competition with, or violation of intellectual property rights in connection with or injury to, or infringement or dilution of, any Trademark owned by the Lien Grantor (including, without limitation, any Trademark identified in Schedule 1 hereto), and all rights and benefits of the Lien Grantor under any Trademark License (including, without limitation, any Trademark License identified in Schedule 1 hereto), or for injury to the goodwill associated with any of the foregoing.

The Lien Grantor irrevocably constitutes and appoints the Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of the Lien Grantor or in the Grantee's name, from time to time, in the Grantee's discretion, so long as any Event of Default shall have occurred and be continuing, to take with respect to the Trademark Collateral any and all appropriate action which the Lien Grantor might take with respect to the Trademark Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Trademark Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly permitted in the Security Agreement or the Credit Agreement, the Lien Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the Trademark Collateral.

The foregoing security interest is granted in conjunction with the security interests granted by the Lien Grantor to the Grantee pursuant to the Security Agreement. The Lien Grantor acknowledges and affirms that the rights and remedies of the Grantee with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference hereir. as if fully set forth herein.

IN WITNESS WHEREOF, the Lien Grantor has caused this Trademark Security Agreement to be duly executed by its officer thereunto duly authorized as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, \_\_\_\_\_ of [NAME OF LIEN GRANTOR] (the "**Company**"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that (s)he signed, executed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth being duly authorized so to do.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[Seal]

\_\_\_\_\_  
Signature of notary public  
My Commission expires \_\_\_\_\_

**Schedule 1  
to Trademark  
Security Agreement**

**[NAME OF LIEN GRANTOR]**

**U.S. TRADEMARK REGISTRATIONS**

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
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**U.S. TRADEMARK APPLICATIONS**

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
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## TRADEMARK LICENSES

<b>Name of Agreement</b>	<b>Parties Licensor/Licensee</b>	<b>Date of Agreement</b>	<b>Subject Matter</b>
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**EXHIBIT E**  
**to Security Agreement**

**PERFECTION CERTIFICATE**

The undersigned is a duly authorized officer of [NAME OF LIEN GRANTOR] (the "**Lien Grantor**"). With reference to the Guarantee and Security Agreement dated as of August \_\_, 2005 among CII Carbon, L.L.C., the Guarantors party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent (terms defined therein being used herein as therein defined), the undersigned certifies to the Administrative Agent and each other Secured Party as follows:

A. Information Required for Filings and Searches for Prior Filings.

1. *Jurisdiction of Organization.* The Lien Grantor is a corporation<sup>1</sup> organized under the laws of \_\_\_\_\_.
2. *Name.* The exact [corporate] name of the Lien Grantor as it appears in its [certificate of incorporation] is as follows:
3. *Prior Names.* (a) Set forth below is each other [corporate] name that the Lien Grantor has had since its organization, together with the date of the relevant change:

(b) Except as set forth in Schedule 1 hereto, the Lien Grantor has not changed its corporate structure<sup>2</sup> in any way within the past five years.

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<sup>1</sup> Modify as needed if the Lien Grantor is not a corporation.

<sup>2</sup> Changes in corporate structure would include mergers and consolidations, as well as any change in the Lien Grantor's form of organization. If any such change has occurred, include in Schedule \_\_ the information required by Part A of this certificate as to each constituent party to a merger or consolidation and any other predecessor organization.

(c) None of the Lien Grantor's Collateral was acquired from another Person within the past five years, except

(i) property sold to the Lien Grantor by another Person in the ordinary course of such other Person's business;

(ii) property with respect to which the Transaction Liens are to be perfected by taking possession or control thereof;

(iii) property acquired in transactions described in Schedule 2 hereto; and

(iv) other property having an aggregate fair market value not exceeding \$\_\_\_\_\_.

4. *Filing Office.* In order to perfect the Transaction Liens granted by the Lien Grantor, a duly completed financing statement on Form UCC-1, with the collateral described as set forth on Schedule 3 hereto, should be on file in the office of \_\_\_\_\_ in \_\_\_\_\_<sup>3</sup>

B. Additional Information Required for Searches for Prior Filings Under Old Article 9.

1. *Current Locations.* (a) The chief executive office of the Lien Grantor is located at the following address:

**Mailing Address** \_\_\_\_\_ **County** \_\_\_\_\_ **State** \_\_\_\_\_

The Lien Grantor [does] [does not] have a place of business in another county of the State listed above.

(b) The following are all places of business of the Lien Grantor not identified above:

**Mailing Address** \_\_\_\_\_ **County** \_\_\_\_\_ **State** \_\_\_\_\_

\_\_\_\_\_

<sup>3</sup> Insert Lien Grantor's "location" determined as provided in UCC Sect on 9-307.

(c) The following are all locations not identified above where the Lien Grantor maintains any Inventory:

<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(d) The following are the names and addresses of all Persons (other than the Lien Grantor) that have possession of any of the Lien Grantor's Inventory:

<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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2. *Prior Locations.* (a) Set forth below is the information required by paragraphs (a) and (b) of Part B-1 above with respect to each other location or place of business maintained by the Lien Grantor at any time during the past five years:

(b) Set forth below is the information required by paragraphs (c) and (d) of Part B-1 above with respect to each other location or bailee where or with whom any of the Lien Grantor's Inventory has been lodged at any time during the past four months:

C. Search Reports.

Attached hereto as Schedule 4 is a true copy of a file search report from the central UCC filing office in each jurisdiction identified in Part A-4 and Part B above with respect to each name set forth in Part A-2 and Part A-3 above (searches in local filing offices, if any, are not required). Attached hereto as Schedule 5 is a true copy of each financing statement or other filing identified in such file search reports.

D. Absence of Certain Property.

The Lien Grantor does not own any assets of material value which constitute commercial tort claims, farm products, electronic chattel paper, letter-of-credit rights which are not supporting obligations or as-extracted collateral, as each of the foregoing terms is defined in the UCC.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_ day of  
August, 2005.

\_\_\_\_\_  
Name:

Title:

**Schedule 1  
to Perfection Certificate**

**CHANGES IN [CORPORATE STRUCTURE]**

**Schedule 2  
to Perfection Certificate**

**ACQUISITIONS**

**Schedule 3  
to Perfection Certificate**

**DESCRIPTION OF COLLATERAL**

All personal property.

**Schedule 4 to  
Perfection Certificate**

**SCHEDULE OF FILINGS  
(FILE SEARCH REPORT)**

**AGAINST \_\_\_\_\_,  
AS DEBTOR**

<b>Filing Office</b>	<b>File Number</b>	<b>Date of Filing<sup>4</sup></b>
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<sup>4</sup> Also indicate lapse date, if other than fifth anniversary.



**Schedule 5  
to Perfection Certificate**

**COPIES OF FINANCING STATEMENTS/FILINGS**

**EXHIBIT F**  
**to Security Agreement**

**ISSUER CONTROL AGREEMENT**

ISSUER CONTROL AGREEMENT dated as of \_\_\_\_\_, \_\_\_\_\_ among \_\_\_\_\_ (the "**Lien Grantor**"), JPMORGAN CHASE BANK, N.A., as Administrative Agent (the "**Secured Party**"), and \_\_\_\_\_ (the "**Issuer**"). All references herein to the "**UCC**" refer to the Uniform Commercial Code as in effect from time to time in [Issuer's jurisdiction of incorporation].

W I T N E S S E T H :

WHEREAS, the Lien Grantor is the registered holder of [specify Pledged Uncertificated Securities issued by the Issuer] issued by the Issuer (the "**Securities**");

WHEREAS, pursuant to a Guarantee and Security Agreement dated as of August \_\_, 2005 (as such agreement may be amended and/or supplemented from time to time, the "**Security Agreement**"), the Lien Grantor has granted to the Secured Party a continuing security interest (the "**Transaction Lien**") in all right, title and interest of the Lien Grantor in, to and under the Securities, whether now existing or hereafter arising; and

WHEREAS, the parties hereto are entering into this Agreement in order to perfect the Transaction Lien on the Securities;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. *Nature of Securities.* The Issuer confirms that (i) the Securities are "uncertificated securities" (as defined in Section 8-102 of the UCC) and (ii) the Lien Grantor is registered on the books of the Issuer as the registered holder of the Securities.

Section 2. *Instructions.* The Issuer agrees to comply with any "instruction" (as defined in Section 8-102 of the UCC) originated by the Secured Party and relating to the Securities without further consent by the Lien Grantor or any other person. The Lien Grantor consents to the foregoing agreement by the Issuer.

Section 3. *Waiver of Lien; Waiver of Set-off.* The Issuer waives any security interest, lien or right of set-off that it may now have or hereafter acquire in or with respect to the Securities. The Issuer's obligations in respect of the

Securities will not be subject to deduction, set-off or any other right in favor of any person other than the Secured Party.

Section 4. *Choice of Law.* This Agreement shall be governed by the laws of [Issuer's jurisdiction of incorporation].<sup>1</sup>

Section 5. *Conflict with Other Agreements.* There is no agreement (except this Agreement) between the Issuer and the Lien Grantor with respect to the Securities [except for [identify any existing other agreements] (the "**Existing Other Agreements**")]. In the event of any conflict between this Agreement (or any portion hereof) and any other agreement [(including any Existing Other Agreement)] between the Issuer and the Lien Grantor with respect to the Securities, whether now existing or hereafter entered into, the terms of this Agreement shall prevail.

Section 6. *Amendments.* No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all the parties hereto.

Section 7. *Notice of Adverse Claims.* Except for the claims and interests of the Secured Party and the Lien Grantor in the Securities, the Issuer does not know of any claim to, or interest in, the Securities. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, attachment, execution or similar process) against the Securities, the Issuer will promptly notify the Secured Party and the Lien Grantor thereof.

Section 8. *Maintenance of Securities.* In addition to, and not in lieu of, the obligation of the Issuer to honor instructions as agreed in Section 2 hereof, the Issuer agrees as follows:

(i) *Lien Grantor Instructions; Notice of Exclusive Control.* So long as the Issuer has not received a Notice of Exclusive Control (as defined below), the Issuer may comply with instructions of the Lien Grantor or any duly authorized agent of the Lien Grantor in respect of the Securities. After the Issuer receives a written notice from the Secured

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<sup>1</sup> If the Issuer's jurisdiction of incorporation is not a State in the United States that has adopted the revisions to Articles 8 and 9 of the UCC promulgated in 1994, this form of Issuer Control Agreement may not be appropriate. It may be necessary to transfer the relevant securities into the Administrative Agent's name to obtain comparable results under the laws of such jurisdiction.

Party that it is exercising exclusive control over the Securities (a “**Notice of Exclusive Control**”), the Issuer will cease complying with instructions of the Lien Grantor or any of its agents.<sup>2</sup>

(ii) *Non-Cash Dividends and Distributions.* The Issuer shall deliver to the Secured Party all dividends, interest and other distributions paid or made upon or with respect to the Securities.

(iii) *Voting Rights.* Until the Issuer receives a Notice of Exclusive Control, the Lien Grantor shall be entitled to direct the Issuer with respect to voting the Securities.

(iv) *Statements and Confirmations.* The Issuer will promptly send copies of all statements and other correspondence concerning the Securities simultaneously to each of the Lien Grantor and the Secured Party at their respective addresses specified in Section 11 hereof.

(v) *Tax Reporting.* All items of income, gain, expense and loss recognized in respect of the Securities shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Lien Grantor.

Section 9. *Representations, Warranties and Covenants of the Issuer.* The Issuer makes the following representations, warranties and covenants:

(i) This Agreement is a valid and binding agreement of the Issuer enforceable in accordance with its terms.

(ii) The Issuer has not entered into, and until the termination of this Agreement will not enter into, any agreement with any other person relating to the Securities pursuant to which it has agreed, or will agree, to comply with instructions (as defined in Section 8-102 of the UCC) of such person. The Issuer has not entered into any other agreement with the Lien Grantor or the Secured Party purporting to limit or condition the obligation of the Issuer to comply with instructions as agreed in Section 2 hereof.

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<sup>2</sup> Delete subsection (i) if the Lien Grantor will not be permitted to sell the Securities.

Section 10. *Successors.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 11. *Notices.* Each notice, request or other communication given to any party hereunder shall be in writing (which term includes facsimile or other electronic transmission) and shall be effective (i) when delivered to such party at its address specified below, (ii) when sent to such party by facsimile or other electronic transmission, addressed to it at its facsimile number or electronic address specified below, and such party sends back an electronic confirmation of receipt or (iii) ten days after being sent to such party by certified or registered United States mail, addressed to it at its address specified below, with first class or airmail postage prepaid:

Lien Grantor:

Secured Party:

Issuer:

Any party may change its address, facsimile number and/or e-mail address for purposes of this Section by giving notice of such change to the other parties in the manner specified above.

Section 12. *Termination.* The rights and powers granted herein to the Secured Party (i) have been granted in order to perfect the Transaction Lien, (ii) are powers coupled with an interest and (iii) will not be affected by any bankruptcy of the Lien Grantor or any lapse of time. The obligations of the Issuer hereunder shall continue in effect until the Secured Party has notified the Issuer in writing that the Transaction Lien has been terminated pursuant to the Security Agreement.

Section 13. *Counterparts.* This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF ISSUER]

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**

[Letterhead of Secured Party]

[Date]

[Name and Address of Issuer]

Attention: \_\_\_\_\_

Re: Notice of Exclusive Control

Ladies and Gentlemen:

As referenced in the Issuer Control Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ among [name of Lien Grantor], us and you (a copy of which is attached), we notify you that we will hereafter exercise exclusive control over [specify Pledged Uncertificated Securities] registered in the name of [name of Lien Grantor] (the "**Securities**"). You are instructed not to accept any directions or instructions with respect to the Securities from any person other than the undersigned unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to [name of Lien Grantor].

Very truly yours,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [name of Lien Grantor]

**EXHIBIT G**  
**to Security Agreement**

**SECURITIES ACCOUNT CONTROL AGREEMENT**

SECURITIES ACCOUNT CONTROL AGREEMENT dated as of \_\_\_\_\_, \_\_\_\_\_ among \_\_\_\_\_ (the "**Lien Grantor**"), JPMorgan Chase Bank, N.A., as Administrative Agent (the "**Secured Party**"), and \_\_\_\_\_ (the "**Securities Intermediary**"). All references herein to the "**UCC**" refer to the Uniform Commercial Code as in effect from time to time in [the State of New York].<sup>1</sup> Terms defined in the UCC have the same meanings when used herein.

W I T N E S S E T H :

WHEREAS, the Lien Grantor is the entitlement holder with respect to the Account (as defined below);

WHEREAS, pursuant to a Guarantee and Security Agreement dated as of August \_\_, 2005 (as such agreement may be amended and/or supplemented from time to time, the "**Security Agreement**"), the Lien Grantor has granted to the Secured Party a continuing security interest (the "**Transaction Lien**") in all right, title and interest of the Lien Grantor in, to and under the Account, all financial assets credited thereto and all security entitlements in respect thereof, whether now owned or existing or hereafter acquired or arising; and

WHEREAS, the parties hereto are entering into this Agreement in order to perfect the Transaction Lien on the Account, all financial assets from time to time credited thereto and all security entitlements in respect thereof;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. *Establishment of Account.* The Securities Intermediary confirms that:

- (i) the Securities Intermediary has established account number [identify account number] in the name of "[name of Lien Grantor]" (such account and any successor account, the "**Account**"),

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<sup>1</sup> See Section 5 below and the footnote thereto.



(ii) the Account is a "securities account" as defined in Section 8-501 of the UCC,

(iii) the Securities Intermediary is acting as a "securities intermediary" (as defined in Section 8-102 of the UCC) in respect of the Account,

(iv) the Securities Intermediary shall, subject to the terms of this Agreement, treat the Lien Grantor as entitled to exercise the rights that comprise all financial assets from time to time credited to the Account,

(v) all property delivered to the Securities Intermediary by or on behalf of the Lien Grantor will be promptly credited to the Account, and

(vi) all financial assets (except cash) credited to the Account will be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another securities account maintained in the name of the Securities Intermediary and in no case will any financial asset credited to the Account be registered in the name of the Lien Grantor, payable to the order of the Lien Grantor or specially indorsed to the Lien Grantor unless such financial asset has been further indorsed to the Securities Intermediary or in blank.

Section 2. *"Financial Assets" Election.* The parties hereto agree that each item of property (whether investment property, financial asset, security, instrument, cash or other property) credited to the Account shall be treated as a "financial asset" within the meaning of Sections 8-102(a)(9) and 8-103 of the UCC.

Section 3. *Entitlement Orders.* The Securities Intermediary agrees to comply with any "entitlement order" (as defined in Section 8-102 of the UCC) originated by the Secured Party and relating to the Account or any financial asset credited thereto without further consent by the Lien Grantor or any other person. The Lien Grantor consents to the foregoing agreement by the Securities Intermediary.

Section 4. *Waiver of Lien; Waiver of Set-off.* The Securities Intermediary waives any security interest, lien or right to make deductions or setoffs that it may now have or hereafter acquire in or with respect to the Account, any financial asset credited thereto or any security entitlement in respect thereof. Neither the financial assets credited to the Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party [(except that the Securities

Intermediary may set off a) all amounts due to it in respect of its customary fees and expenses for the routine maintenance and operation of the Account and b) the face amount of any checks that have been credited to the Account but are subsequently returned unpaid because of uncollected or insufficient funds)].

Section 5. *Choice of Law.* This Agreement shall be construed in accordance with and governed by the laws of [the State of New York].<sup>2</sup> [The State of New York] shall be deemed to be the Securities Intermediary's jurisdiction for purposes of the UCC (including, without limitation, Section 8-110 thereof).

Section 6. *Conflict with Other Agreements.* There is no agreement (except this Agreement) between the Securities Intermediary and the Lien Grantor with respect to the Account [except for [identify any existing other agreements] (the "**Existing Other Agreements**")]. In the event of any conflict between this Agreement (or any portion hereof) and any other agreement [(including any Existing Other Agreement)] between the Securities Intermediary and the Lien Grantor with respect to the Account, whether now existing or hereafter entered into, the terms of this Agreement shall prevail. [If any Existing Other Agreement does not specify that it is governed by the laws of [the jurisdiction specified in Section 5], such Existing Other Agreement is hereby amended to specify that it is governed by the laws of [the jurisdiction specified in Section 5].

Section 7. *Amendments.* No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all the parties hereto.

Section 8. *Notice of Adverse Claims.* Except for the claims and interests of the Secured Party and the Lien Grantor, the Securities Intermediary does not know of any claim to, or interest in, the Account, any financial asset credited thereto or any security entitlement in respect thereof. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, attachment, execution or similar process) against the Account, any financial asset credited thereto or any security entitlement in respect thereof, the Securities Intermediary will promptly notify the Secured Party and the Lien Grantor thereof.

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<sup>2</sup> Any State in the United States that has adopted the revisions to Articles 8 and 9 of the UCC promulgated in 1994 is acceptable, but the choice of New York law (which Section 8-110 of the UCC permits regardless of other contacts) allows a New York lawyer to give an opinion as to the effect of this Agreement.

Section 9. *Maintenance of Account.* In addition to, and not in lieu of, the obligation of the Securities Intermediary to honor entitlement orders as agreed in Section 3 hereof, the Securities Intermediary agrees to maintain the Account as follows:

(i) *Lien Grantor Entitlement Orders; Notice of Exclusive Control.* So long as the Securities Intermediary has not received a Notice of Exclusive Control (as defined below), the Securities Intermediary may, subject to paragraph (iii) below, comply with entitlement orders of the Lien Grantor or any duly authorized agent of the Lien Grantor in respect of the Account and any or all financial assets credited thereto. After the Securities Intermediary receives a written notice from the Secured Party that is exercising exclusive control over the Account (a “**Notice of Exclusive Control**”), the Securities Intermediary will cease complying with entitlement orders of the Lien Grantor or any of its agents.

(ii) *Voting Rights.* Until the Securities Intermediary receives a Notice of Exclusive Control, the Lien Grantor shall be entitled to direct the Securities Intermediary with respect to the voting of any financial assets credited to the Account.

(iii) *Permitted Investments.* Until the Securities Intermediary receives a Notice of Exclusive Control, the Lien Grantor shall be entitled to direct the Securities Intermediary with respect to the selection of investments to be made and credited to the Account; *provided* that the Securities Intermediary shall not honor any instruction or entitlement order to purchase any investment except investments of a type described in Exhibit B hereto.<sup>3</sup>

(iv) *Statements and Confirmations.* The Securities Intermediary will promptly send copies of all statements, confirmations and other correspondence concerning the Account and/or any financial assets credited thereto simultaneously to each of the Lien Grantors and the Secured Party at their respective addresses specified in Section 12 hereof.

(v) *Tax Reporting.* All items of income, gain, expense and loss recognized in the Account or in respect of any financial assets credited thereto shall be reported to the Internal Revenue Service and all state and

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<sup>3</sup> This Schedule should list the types of investments that are Permitted Investments.

local taxing authorities under the name and taxpayer identification number of the Lien Grantor.

Section 10. *Representations, Warranties and Covenants of the Securities Intermediary.* The Securities Intermediary makes the following representations, warranties and covenants:

(i) The Account has been established as set forth in Section 1 above and will be maintained in the manner set forth herein until this Agreement is terminated. The Securities Intermediary will not change the name or account number of the Account without the prior written consent of the Secured Party.

(ii) No financial asset credited to the Account is or will be registered in the name of the Lien Grantor, payable to the order of the Lien Grantor, or specially indorsed to the Lien Grantor, unless such financial asset has been further indorsed by the Lien Grantor to the Securities Intermediary or in blank.

(iii) This Agreement is a valid and binding agreement of the Securities Intermediary enforceable in accordance with its terms.

(iv) The Securities Intermediary has not entered into, and until the termination of this Agreement will not enter into, any agreement with any person (other than the Secured Party) relating to the Account and/or any financial asset credited thereto pursuant to which it has agreed, or will agree, to comply with entitlement orders of such person. The Securities Intermediary has not entered into any other agreement with the Lien Grantor or the Secured Party purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as agreed in Section 3 hereof.

Section 11. *Successors.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 12. *Notices.* Each notice, request or other communication given to any party hereunder shall be in writing (which term includes facsimile or other electronic transmission) and shall be effective (i) when delivered to such party at its address specified below, (ii) when sent to such party by facsimile or other electronic transmission, addressed to it at its facsimile number or electronic address specified below, and such party sends back an electronic confirmation of receipt or (iii) ten days after being sent to such party by certified or registered

United States mail, addressed to it at its address specified below, with first class or airmail postage prepaid:

Lien Grantor:

Secured Party:

Securities Intermediary:

Any party may change its address, facsimile number and/or e-mail address for purposes of this Section by giving notice of such change to the other parties in the manner specified above.

Section 13. *Termination.* The rights and powers granted herein to the Secured Party (i) have been granted in order to perfect the Transaction Lien, (ii) are powers coupled with an interest and (iii) will not be affected by any bankruptcy of the Lien Grantor or any lapse of time. The obligations of the Securities Intermediary hereunder shall continue in effect until the Secured Party has notified the Securities Intermediary in writing that the Transaction Lien has been terminated pursuant to the terms of the Security Agreement.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF SECURITIES INTERMEDIARY]

By: \_\_\_\_\_  
Name:  
Title:



**Exhibit A**

[Letterhead of Secured Party]

[Date]

[Name and Address of Securities Intermediary]

Attention: \_\_\_\_\_

Re: Notice of Exclusive Control

Ladies and Gentlemen:

As referenced in the Securities Account Control Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ among [name of Lien Grantor], us and you (a copy of which is attached), we notify you that we will hereafter exercise exclusive control over securities account number \_\_\_\_\_ (the "**Account**"), all financial assets from time to time credited thereto and all security entitlements in respect thereof. You are instructed not to accept any directions, instructions or entitlement orders with respect to the Account or the financial assets credited thereto from any person other than the undersigned unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to [name of Lien Grantor].

Very truly yours,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

cc: [name of Lien Grantor]

**Exhibit B**

**Permitted Investments**



## DEPOSIT ACCOUNT CONTROL AGREEMENT

DEPOSIT ACCOUNT CONTROL AGREEMENT dated as of \_\_\_\_\_, \_\_\_\_\_ among \_\_\_\_\_ (the "**Lien Grantor**"), JPMorgan Chase Bank, N.A., as Administrative Agent (the "**Secured Party**"), and \_\_\_\_\_ (the "**Bank**"). All references herein to the "**UCC**" refer to the Uniform Commercial Code as in effect from time to time in [the State of New York].<sup>1</sup> Terms defined in the UCC have the same meanings when used herein.

### WITNESSETH:

WHEREAS, the Lien Grantor is the Bank's customer (as defined in Section 4-104(1)(e) of the UCC) with respect to the Account (as defined below);

WHEREAS, pursuant to a Guarantee and Security Agreement dated as of August \_\_, 2005 (as such agreement may be amended and/or supplemented from time to time, the "**Security Agreement**"), the Lien Grantor has granted to the Secured Party a continuing security interest (the "**Transaction Lien**") in all right, title and interest of the Lien Grantor in, to and under the Account; and

WHEREAS, the parties hereto are entering into this Agreement in order to perfect the Transaction Lien on the Account and any and all funds or deposits from time to time held therein or credited thereto, whether now owned or existing or hereafter acquired or arising;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Establishment of Account. The Bank confirms that:

(i) the Bank has established account number [identify account number] in the name of "[name of Lien Grantor]" (such account and any successor account, the "**Account**");

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<sup>1</sup> See Section 4 below and the footnote thereto.

(ii) the Account is a "deposit account" as defined in Section 9-102(a)(29) of the UCC; and

(iii) the Bank is a "bank" (as defined in section 9-102 of the UCC) and is acting in such capacity in respect of the Account.

Section 2. *Instructions.* The Lien Grantor, the Secured Party and the Bank agree that the Bank will comply with (i) any instruction originated by the Secured Party directing disposition of funds in the Account and (ii) any other instruction from the Secured Party in respect of the Account, in each case without further consent by the Lien Grantor or any other person.

Section 3. *Waiver of Lien; Waiver of Set-off.* The Bank waives any security interest, lien or right to make deductions or setoffs that it may now have or hereafter acquire in or with respect to the Account or any or all funds or deposits from time to time held therein or credited thereto. No amounts credited to the Account will be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party [(except that the Bank may set off c) all amounts due to it in respect of its customary fees and expenses for the routine maintenance and operation of the Account and d) the face amount of any checks that have been credited to the Account but are subsequently returned unpaid because of uncollected or insufficient funds)].

Section 4. *Choice of Law.* This Agreement shall be construed in accordance with and governed by the laws of [the State of New York].<sup>2</sup> [The State of New York] shall be deemed to be the bank's jurisdiction (as defined in Section 9-304 of the UCC) with respect to the Account.

Section 5. *Conflict with Other Agreements.* There is no agreement (except this Agreement) between the Bank and the Lien Grantor with respect to the Account [except for [identify any existing other agreements] (the "**Existing Other Agreements**")]. In the event of any conflict between this Agreement (or any portion hereof) and any other agreement [(including any Existing Other Agreement)] between the Bank and the Lien Grantor with respect to the Account or any or all funds or deposits from time to time held therein or credited thereto, whether now existing or hereafter entered into, the terms of this Agreement shall prevail. [If any Existing Other Agreement does not specify that it is governed by

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<sup>2</sup> Any State in the United States is acceptable, but the choice of New York law (which Section 9-304 of the UCC permits regardless of other contacts) allows a New York lawyer to give an opinion as to the effect of this Agreement.

the laws of [the jurisdiction specified in Section 5], such Existing Other Agreement is hereby amended to specify that it is governed by the laws of [the jurisdiction specified in Section 5].

Section 6. *Amendments.* No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all the parties hereto.

Section 7. *Notice of Adverse Claims.* Except for the claims and interests of the Secured Party and the Lien Grantor, the Bank does not know of any claim to, or interest in, the Account or any or all funds or deposits held therein or credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, attachment, execution or similar process) against the Account or any or all funds or deposits held therein or credited thereto, the Bank will promptly notify the Secured Party and the Lien Grantor thereof.

Section 8. *Maintenance of Account.* In addition to, and not in lieu of, the obligation of the Bank to honor instructions originated by the Secured Party as agreed in Section 3 hereof, the Bank agrees to maintain the Account as follows:

(i) *Lien Grantor Entitlement Orders; Notice of Exclusive Control.* So long as the Bank has not received a Notice of Exclusive Control (as defined below), the Bank may comply with instructions originated by the Lien Grantor or any duly authorized agent of the Lien Grantor in respect of the Account and any or all funds or deposits held therein or credited thereto. After the Bank receives a written notice from the Secured Party that it is exercising exclusive control over the Account (a "**Notice of Exclusive Control**"), the Bank will cease complying with instructions originated by the Lien Grantor or any of its agents.

(ii) *Statements.* The Bank will promptly send copies of all statements and other correspondence concerning the Account simultaneously to each of the Lien Grantor and the Secured Party at their respective addresses specified in Section 12 hereof.

(iii) *Tax Reporting.* All items of income, gain, expense and loss recognized in the Account or in respect of any funds or deposits held therein or credited thereto shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Lien Grantor.

Section 9. *Representations, Warranties and Covenants of the Bank.* The Bank makes the following representations, warranties and covenants:

(i) The Account has been established as set forth in Section 1 above and will be maintained in the manner set forth herein until this Agreement is terminated. The Bank will not change the name or account number of the Account without the prior written consent of the Secured Party.

(ii) Neither the Account nor any funds or deposits at any time held therein or credited thereto is or will be evidenced by any instrument (as defined in Section 9-102 of the UCC) or constitutes or will constitute investment property (as defined in Section 9-102 of the UCC)

(iii) This Agreement is a valid and binding agreement of the Bank enforceable in accordance with its terms.

(iv) The Bank has not entered into, and until the termination of this Agreement will not enter into, any agreement with any person (other than the Secured Party) relating to the Account and/or any funds or deposits held therein or credited thereto pursuant to which it has agreed, or will agree, to comply with instructions of such person. The Bank has not entered into any other agreement with the Lien Grantor or the Secured Party purporting to limit or condition the obligation of the Bank to comply with instructions originated by the Secured Party as agreed in Section 2 hereof.

Section 10. *Successors.* This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 11. *Notices.* Each notice, request or other communication given to any party hereunder shall be in writing (which term includes facsimile or other electronic transmission) and shall be effective (i) when delivered to such party at its address specified below, (ii) when sent to such party by facsimile or other electronic transmission, addressed to it at its facsimile number or electronic address specified below, and such party sends back an electronic confirmation of receipt or (iii) ten days after being sent to such party by certified or registered United States mail, addressed to it at its address specified below, with first class or airmail postage prepaid:

Lien Grantor:

Secured Party:

Bank:

Any party may change its address, facsimile number and/or e-mail address for purposes of this Section by giving notice of such change to the other parties in the manner specified above.

Section 12. *Termination.* The rights and powers granted herein to the Secured Party (i) have been granted in order to perfect the Transaction Lien, (ii) are powers coupled with an interest and (iii) will not be affected by any bankruptcy of the Lien Grantor or any lapse of time. The obligations of the Bank hereunder shall continue in effect until the Secured Party has notified the Bank in writing that the Transaction Lien has been terminated pursuant to the terms of the Security Agreement.

[NAME OF LIEN GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent:

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF BANK]

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**

[Letterhead of Secured Party]

[Date]

[Name and Address of Bank]

Attention: \_\_\_\_\_

Re: Notice of Exclusive Control

Ladies and Gentlemen:

As referenced in the Deposit Account Control Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ among [name of Lien Grantor], us and you (a copy of which is attached), we notify you that we will hereafter exercise exclusive control over deposit account number \_\_\_\_\_ (the "**Account**") and all funds and deposits from time to time held therein or credited thereto. You are instructed not to accept any directions or instructions with respect to the Account or the funds or deposits held therein or credited thereto from any person other than the undersigned unless otherwise ordered by a court of competent jurisdiction.

You are instructed to deliver a copy of this notice by facsimile transmission to [name of Lien Grantor].

Very truly yours,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

cc: [name of Lien Grantor]

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